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I N D E X

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None	

—Jury Selection—

1 PROCEEDINGS had before The Honorable Irene C. Berger,
2 Judge, United States District Court, Southern District of West
3 Virginia, in Charleston, West Virginia, on October 31, 2014,
4 at 9:25 a.m., as follows:

5 THE CLERK: The matter before the Court is *Tyree, et*
6 *al. vs. Boston Scientific Corporation*, Civil Action Number
7 2:12-CV-8633, scheduled for jury selection and trial.

8 THE COURT: Good morning, everyone. I apologize that
9 you've had to wait here this morning.

10 Counsel, would you please note your appearances for
11 the record.

12 MR. FARRELL: Paul Farrell, Jr., on behalf of the
13 plaintiffs.

14 MS. WAGSTAFF: Good morning, Your Honor. Aimee
15 Wagstaff on behalf of the plaintiffs.

16 MR. MONSOUR: Good morning, Your Honor. Doug Monsour
17 on behalf of the plaintiffs.

18 MR. LOVE: Good morning, Your Honor. Scott Love on
19 behalf of the plaintiffs.

20 MR. ADAMS: Your Honor, on behalf of the defendant,
21 Boston Scientific, my name is Robert Adams.

22 MS. WEILER: Also on behalf of defendant, Boston
23 Scientific Corporation, Eva Weiler.

24 MR. STRONGMAN: Jon Strongman also on behalf of
25 Boston Scientific.

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1 MR. BONASSO: Michael Bonasso for Boston Scientific.

2 THE COURT: All right. Thank you, counsel.

3 We are about to begin the process of jury selection.

4 Madam Clerk, if you will seat the jurors for us,
5 please.

6 THE CLERK: Kristen Anderson.

7 Ms. Anderson, if you would please come and take a
8 seat in the back of the jury box.

9 Jessica Burdette, Ralph Harvey, Andrea Parsons,
10 Gaynell Boggess, Sara Adkins, Tonya Thomas-Clark, Jessica
11 Edwards, Lisa Stanley, Betty Elkins, Lisa Moser, Margaret
12 Cordray, Cathy Ferris, Charles Brewer, Craig Aliff, Angela
13 Shears, William Boyle, Alice Mollohan, Melissa McClure, Amanda
14 Gates, Annette Phillips, Chester Mitchell, Chris Goertler,
15 Chester Porter, Gaylen Cole, Catherine Czeck, Daniel Lester,
16 Laura Wetherholt, Brian Black, Julian Martin, Kathryn
17 Flanagan, Randall Matthews, Martha Ruble, Martin Thompson,
18 Lindsay Powell.

19 Ladies and gentlemen, would you all please stand and
20 raise your right hand.

21 (Prospective jurors administered oath on *voir dire*)

22 THE COURT: Ladies and gentlemen, again good morning
23 to you. We are about to begin jury selection in a civil case
24 and I am Judge Berger. I am going to begin the process by
25 asking you a number of questions. But before I do that, there

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1 are a few things that I want to address with you.

2 First, I want to tell you that the questions that I
3 will ask of you are simply questions designed to ensure that
4 both the plaintiff and the defendant in this case has a jury
5 that can sit fairly and impartially, and a jury that can
6 follow the Court's instructions and render a verdict as a
7 result of the evidence that you hear and applying the
8 instructions of law to that evidence.

9 So, the questions -- there are no right or wrong
10 answers to them. Answer them honestly. You're not going to
11 be graded on your answers. You won't be given an A or an F.
12 Just do your best to answer them as honestly as you can.

13 Secondly, before I forget to tell you, if you need to
14 answer a question verbally, please begin your answer by
15 telling me your name and your jury number so that will be of
16 assistance to me, to the court reporter, as well as to the
17 parties here in the courtroom.

18 You may find from your seat that some of the
19 questions will seem unduly probing into your private affairs.
20 That's not intended. Again, we are simply trying to get a
21 jury that can be fair and impartial to everyone involved in
22 the lawsuit.

23 But if I should ask you a question that you feel
24 uncomfortable answering here in open court, please feel free
25 to raise your hand. I will bring you here to the bench with

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1 counsel and you can answer the question privately. So, do not
2 hesitate to do that.

3 As you listen to these questions as we go forward
4 here this morning, you will find that you will hear a brief
5 synopsis of what this case is about. Sometimes we have had
6 life experiences that simply won't let us hear something with
7 an open mind and to sit fairly and impartially.

8 If there's anything like that that strikes you,
9 again, I will want to bring you to the bench so that we can
10 discuss it in order to ensure that everyone gets a fair and
11 impartial jury.

12 Lastly, before I begin the questions, some of the
13 language that we use may be foreign to you. If there is any
14 question that I ask that you don't understand, please tell me.
15 If you don't hear something, please tell me. We do not want
16 you to answer a question and give an answer that you don't
17 intend.

18 So, there's nothing about the language that you can't
19 understand. It's just sometimes we speak in language that
20 others don't use every day, and that's not intended. So, make
21 us use whatever language you want us to use so that you
22 understand the question that's being asked of you.

23 The trial that we're about to begin I expect to last
24 approximately ten and a half working days. I will tell you
25 that we, because of my schedule, will not be in court on the

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1 6th of this month, the 7th, and then the 11th is a holiday.
2 So, we will not be working on those days.

3 Is there anyone who has a prior serious commitment
4 which would prevent you from sitting as a juror during the
5 course of this time?

6 Yes, sir. Let me start with you back there in the
7 back. State your name and your jury number, please.

8 PROSPECTIVE JUROR: Craig Aliff, 15. I snow plow the
9 Turnpike and it's just mandatory work whenever the weather is
10 bad.

11 THE COURT: All right. Are you calling for snow,
12 Mr. Aliff?

13 PROSPECTIVE JUROR: Tonight they are.

14 THE COURT: All right. Thank you. There was another
15 hand.

16 PROSPECTIVE JUROR: My name is Randall Matthews,
17 Juror 32.

18 THE COURT: Yes, Mr. Matthews.

19 PROSPECTIVE JUROR: My wife has an appointment at
20 Cleveland Clinic on the 20th.

21 THE COURT: All right.

22 PROSPECTIVE JUROR: And I don't know if that will
23 fall in that or not.

24 THE COURT: All right. Thank you.

25 Yes, sir.

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1 PROSPECTIVE JUROR: Judge Berger, I have a class in
2 Raleigh on the 12th.

3 THE COURT: I'm sorry, I didn't hear the beginning of
4 your answer.

5 PROSPECTIVE JUROR: I have a class in Raleigh on the
6 12th.

7 THE COURT: Can you tell me the nature of your class,
8 please?

9 PROSPECTIVE JUROR: Radiation safety officer class.

10 THE COURT: All right. And is that an all-day class?

11 PROSPECTIVE JUROR: Yeah.

12 THE COURT: All right. Sir.

13 PROSPECTIVE JUROR: Brian Black, Juror 29. It does
14 present a financial hardship for me. If I don't work, I do
15 not get paid. I just wanted to make that known, please.

16 THE COURT: All right. Thank you.

17 Yes, ma'am.

18 PROSPECTIVE JUROR: My name is Amanda Gates, number
19 20. I'm under the same thing that he is. My income pays the
20 bills and medicines. I need to work. I can't afford to go
21 without my income.

22 THE COURT: All right. Anyone else?

23 Yes, ma'am.

24 PROSPECTIVE JUROR: Jessica Edwards, Juror Number 8.
25 Same thing, hardship if I'm not working.

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1 THE COURT: All right. Sir.

2 PROSPECTIVE JUROR: Charles Brewer, 14. I'm in the
3 same situation as the previous three.

4 THE COURT: All right. I appreciate you all being
5 forthright with your answers. Let me say to you that you will
6 find here that the judges are fairly strict on jury excuses.
7 The reason for that is in an effort to be fair to everyone,
8 there probably is not one juror here who has, does not have
9 something that they need to attend to, be it child care, your
10 job, caring for a parent or some other family member. And,
11 so, in order to be fair to everyone, we are very strict about
12 our excuses of releasing anyone from the jury.

13 With that in mind, we will go forward this morning
14 and I will keep your answers to my questions in mind. Thank
15 you all.

16 Let me ask you some preliminary questions that I
17 think the clerk would have covered with you previously.

18 If there's anyone on the panel who is not at least 18
19 years of age, please raise your hand.

20 (No Response)

21 THE COURT: All right. Anyone who is presently not a
22 citizen of the United States, do likewise.

23 (No Response)

24 THE COURT: The record should reflect that no one has
25 answered those questions.

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1 Is there any member of the panel who's not resided
2 here within the Southern District of West Virginia for at
3 least a year?

4 (No Response)

5 THE COURT: Any member who has ever been convicted of
6 or currently charged with a felony offense whose rights have
7 not been restored, please raise your hand.

8 (No Response)

9 THE COURT: Anyone unable to speak and understand the
10 English language, please raise your hand as well.

11 (No Response)

12 THE COURT: Again, the record should reflect that no
13 one has raised their hand in response to those questions.

14 Is there anyone on the panel who currently has a case
15 pending in the United States District Court here in the
16 Southern District of West Virginia?

17 Yes, ma'am.

18 PROSPECTIVE JUROR: I'm not really sure what court
19 it's in, but we have a criminal case pending for a stolen
20 vehicle.

21 THE COURT: And when you say "we" --

22 PROSPECTIVE JUROR: Me and my husband.

23 THE COURT: Was your vehicle stolen, ma'am?

24 PROSPECTIVE JUROR: Yes, ma'am.

25 THE COURT: State your name for me, please.

—Jury Selection—

1 PROSPECTIVE JUROR: Melissa McClure, Juror 19.

2 THE COURT: All right. Thank you. And where was
3 that stolen?

4 PROSPECTIVE JUROR: From Lincoln County. It has been
5 retrieved.

6 THE COURT: All right. I am going to give the
7 lawyers an opportunity to introduce themselves as well as
8 their clients. And then I'll have some questions for you as a
9 result.

10 Let's begin with plaintiffs' counsel.

11 Mr. Farrell, if you would introduce yourself to the
12 ladies and gentlemen of the jury, your co-counsel, as well as
13 your clients, please.

14 MR. FARRELL: Thank you, Judge. My.

15 Name is Paul Farrell, Jr. I'm a lawyer at Green
16 Ketchum in Huntington, and it's my pleasure to represent and
17 introduce my co-counsel in this case.

18 This is Ms. Aimee Wagstaff.

19 MS. WAGSTAFF: Hello. Good morning.

20 MR. FARRELL: This is Mr. Douglas Monsour.

21 MR. MONSOUR: Good morning.

22 MR. FARRELL: And Mr. Scott Love.

23 MR. LOVE: Good morning.

24 MR. FARRELL: So, the four of us will serve as
25 counsel in this case. And we're here on behalf of four

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1 clients here today, Ms. Chris Wilson, Ms. Jeanie Blankenship,
2 Mrs. Jacquelyn Tyree, and Ms. Carol Campbell.

3 Thank you, Your Honor.

4 THE COURT: All right, counsel for the defense.

5 Mr. Adams, if you would please introduce yourself as
6 well as your co-counsel and your client to the jury.

7 MR. ADAMS: Certainly, Your Honor.

8 Ladies and gentlemen, my name is Robert Adams. I go
9 by Rob and I represent Boston Scientific. And in this case
10 we're working with Mr. Michael Bonasso. He lives here in
11 Charleston. He's at the law firm of Flaherty & Bonasso. And
12 my partners are going to try this case with me. And this is
13 Eva Weiler and Jon Strongman.

14 My client is Boston Scientific. It is a company that
15 consists of people. Throughout this trial you're going to see
16 various people come in and testify as witnesses. For example,
17 you're going to see a woman named Janice Connor. You're going
18 to see another woman by the name of Doreen Rao.

19 So, because this company's not located here in the
20 Charleston area, we're actually -- by the name, it's in
21 Boston -- there will be people coming in and out and you will
22 be introduced to them as the trial progresses.

23 Thank you for your attention.

24 THE COURT: Ladies and gentlemen, let me ask you, do
25 you know any of the lawyers who are seated at counsel table?

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1 Please raise your hand.

2 (No Response)

3 THE COURT: All right. What about the parties, the
4 plaintiffs who were introduced to you? Do you know any of the
5 plaintiff?

6 Yes, ma'am.

7 PROSPECTIVE JUROR: Annette Phillips, Juror Number
8 21. I know one of the plaintiffs.

9 THE COURT: All right. And tell me without going
10 further which plaintiff is it that you know?

11 PROSPECTIVE JUROR: Jacquelyn Tyree.

12 THE COURT: All right. How long have you known Ms.
13 Tyree?

14 PROSPECTIVE JUROR: It's been a long time.

15 THE COURT: All right. Counsel, let me see you here
16 at the bench, please.

17 (Bench conference on the record)

18 (Prospective Juror Annette Phillips approached the
19 bench.)

20 THE COURT: Ms. Phillips, --

21 PROSPECTIVE JUROR: Yes.

22 THE COURT: -- in what way do you know Ms. Tyree?

23 PROSPECTIVE JUROR: As a family friend.

24 THE COURT: All right. And how long has that been?

25 PROSPECTIVE JUROR: As long as -- it's been a long

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1 time. It's been over -- it's been a long time. I'm 40.

2 She's known -- I know -- she knows my family. And the lady
3 she used to work with was a friend of my mother's.

4 THE COURT: She is a plaintiff in this case.

5 PROSPECTIVE JUROR: Yes.

6 THE COURT: She is one of four plaintiffs who has
7 brought a claim against Boston Scientific. Your knowledge of
8 her, would that influence your ability to sit fairly and
9 impartially in this case?

10 PROSPECTIVE JUROR: No.

11 THE COURT: Tell me more about the relationship that
12 you have with her. How often do you see her?

13 PROSPECTIVE JUROR: I haven't seen her in over 10, 20
14 years.

15 THE COURT: All right.

16 PROSPECTIVE JUROR: The lady that she used to work
17 for who was a magistrate --

18 THE COURT: Nancy Starks.

19 PROSPECTIVE JUROR: -- Nancy Starks, Nancy Starks was
20 a good friend of my mother's who also passed away. So, I
21 haven't seen -- it's been probably before, before she passed
22 away since I have seen her.

23 THE COURT: All right.

24 PROSPECTIVE JUROR: And I did not recognize the name
25 until I came into the courtroom and I saw her, yes.

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1 THE COURT: All right. Have you had occasion to
2 socialize with --

3 PROSPECTIVE JUROR: No, ma'am.

4 THE COURT: Okay. I don't know the nature of your
5 relationship. Is there anything negative about your
6 relationship that would cause you to lean against her in this
7 case or such positive feelings about her that it would cause
8 you to lean in her favor without regard to the evidence and
9 the instructions of law that I give to you?

10 PROSPECTIVE JUROR: No, ma'am.

11 THE COURT: All right.

12 Counsel, I'm going to let you all inquire if you have
13 any questions. Mr. Adams.

14 MR. ADAMS: Yes, I have some questions.

15 PROSPECTIVE JUROR: Sure.

16 MR. ADAMS: I'm Rob Adams. I represent Boston
17 Scientific.

18 PROSPECTIVE JUROR: Uh-huh.

19 MR. ADAMS: Do you consider -- I thought you said
20 that Ms. Tyree is a family friend.

21 PROSPECTIVE JUROR: Uh-huh.

22 MR. ADAMS: Is that right.

23 PROSPECTIVE JUROR: Uh-huh.

24 MR. ADAMS: So, you do consider her as a friend of
25 yours? Is that accurate.

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1 PROSPECTIVE JUROR: Uh-huh.

2 MR. ADAMS: Okay. You need to answer audibly.

3 PROSPECTIVE JUROR: I'm sorry. Yes.

4 MR. ADAMS: And, so, as her being a friend, I think
5 you mentioned she was -- she's been a friend for a long time.
6 Is that correct.

7 PROSPECTIVE JUROR: Correct. And I -- when I say
8 that, she is a friend through knowing my mother who was a
9 friend of her employer.

10 MR. ADAMS: Okay.

11 PROSPECTIVE JUROR: Do you understand?

12 MR. ADAMS: Okay, understood. As a juror, you're
13 going to have to judge credibility. And one of the questions
14 I have because of your relationship with her and because she's
15 a long-time friend, would you tend to already have a belief
16 that she is going to be honest already before you've heard any
17 evidence.

18 PROSPECTIVE JUROR: No. I am coming into this
19 knowing nothing --

20 MR. ADAMS: Okay.

21 PROSPECTIVE JUROR: -- irregardless of who is, you
22 know, there. I am coming in and it doesn't matter to me
23 whether she's -- if I knew the person or not, I am coming in.
24 I'm hearing what is given to me from you, from both sides.

25 MR. ADAMS: Okay.

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1 THE COURT: Mr. Adams, let me interrupt you just a
2 moment.

3 MR. ADAMS: Yes, ma'am.

4 THE COURT: I am going to give this jury instructions
5 of law on how to judge the credibility and believability --

6 PROSPECTIVE JUROR: Uh-huh.

7 THE COURT: -- of the witnesses' testimony. Will you
8 be able to apply that instruction to Ms. Tyree the same as you
9 would to the witnesses who you have no familiarity with?

10 PROSPECTIVE JUROR: Yes.

11 THE COURT: All right. Go ahead, please, sir.

12 MR. ADAMS: Those are all the questions I had. Your
13 question was much better than mine.

14 THE COURT: All right. Mr. Farrell, any questions?

15 MR. FARRELL: No questions.

16 THE COURT: All right. Counsel, stay with me,
17 please.

18 Ms. Phillips, you can have your seat. Thank you.

19 PROSPECTIVE JUROR: Thank you.

20 (Prospective Juror Annette Phillips returned to the
21 jury box.)

22 THE COURT: I want to reveal to all of you that I
23 know Ms. Tyree. I did not realize in working on the case that
24 I knew her. But seeing her here, she was a magistrate
25 assistant for a Magistrate Nancy Starks who died some years

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1 ago. I cannot tell you how many.

2 But I want to put that on the record and let you
3 lawyers know. In my preparing for this case, I saw the name
4 "Tyree" but she had a different name. I can't remember what
5 her last name was. But I did not in working up the case
6 realize it was this lady who was a judicial assistant to
7 Magistrate Starks.

8 MR. ADAMS: Thank you, Your Honor. Thank you for
9 doing that.

10 THE COURT: All right.

11 MR. ADAMS: Your Honor, with respect to various
12 jurors as they're called to the bench, I would assume you want
13 us to wait until a certain point to ask the jurors be stricken
14 for cause.

15 THE COURT: Quite frankly, because I'm old and my
16 memory is not good, I think it's better that we take them as
17 they go.

18 MR. ADAMS: Okay. And I would move that this juror
19 be stricken for cause. I recognize that in response to your
20 question about the instructions she did say that she could
21 follow the instructions, but I think there's law indicating
22 that if the overall sense of the juror is such that they could
23 be biased despite their answer, then I think they can be
24 stricken.

25 And I just think that somebody who's been a long-term

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1 family friend, and she does consider Ms. Tyree a friend,
2 should be excused from the panel. We have plenty of other
3 jurors to choose from.

4 THE COURT: All right. Counsel, anything further?

5 MR. FARRELL: I think that her answers to your
6 questions establish that she could be fair and objective
7 hearing the evidence and we would oppose the motion to strike
8 her for cause.

9 THE COURT: When she answered the question initially,
10 Mr. Adams, I had the same concerns that you have and that's
11 why I wanted to bring her to the bench. As we explored
12 further, even though she says that it's a family friend and
13 asking about the nature of it, it does not appear to me to be
14 any type of a close relationship as I understand it.

15 She considers her to be a family friend through her
16 mother who was a friend of Ms. Tyree's employer. That being
17 the case, I'm going to deny your motion to challenge for
18 cause, preserving the objection and exception of the defense.

19 MR. ADAMS: Thank you.

20 MS. WAGSTAFF: Thank you.

21 (Bench conference concluded)

22 THE COURT: All right, ladies and gentlemen, did
23 anyone else know any of the plaintiffs seated here in the
24 courtroom when they were introduced to you?

25 (No Response)

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1 THE COURT: What about Boston Scientific? Do any of
2 you -- are any of you knowledgeable about that company or have
3 any ties, any financial interest or otherwise in Boston
4 Scientific?

5 Yes, ma'am.

6 PROSPECTIVE JUROR: Amanda Gates, Juror Number 20. I
7 work in a hospital and some of our equipment is Boston
8 Scientific that we have there. So, --

9 THE COURT: What is your position with the hospital?

10 PROSPECTIVE JUROR: ER nurse.

11 THE COURT: All right. Thank you.

12 Yes, ma'am.

13 PROSPECTIVE JUROR: Lisa Moser, Juror Number 11. My
14 brother-in-law is, was a district manager for Boston
15 Scientific which did cover Western Pennsylvania and I know
16 even Charleston. I'm not sure what parts of West Virginia.
17 He was in the cardiac division and left six months ago.

18 THE COURT: Is there -- I'll direct this question to
19 both of you -- anything about your brother-in-law having been
20 in this district for that company or the hospital having
21 equipment from Boston Scientific, anything about that that
22 would prevent either of you from sitting fairly and
23 impartially as jurors in this case?

24 PROSPECTIVE JUROR: I don't believe so.

25 THE COURT: Ma'am?

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1 PROSPECTIVE JUROR: I don't believe so.

2 THE COURT: All right. Let me ask you, do any of you
3 know any other lawyers -- you've indicated that you do not
4 know the lawyers who are present here this morning by your
5 silence. Do you know any other lawyer or person working with
6 the law firm of Clark, Love and Hutson? Please raise your
7 hand.

8 (No Response)

9 THE COURT: Are any of you familiar with any other
10 lawyer or person working with the Monsour Law Firm? Please
11 raise your hand.

12 (No Response)

13 THE COURT: And what about the law firm of Andrus
14 Wagstaff? Anyone know anyone there, have any familiarity with
15 that law firm?

16 (No Response)

17 THE COURT: What about the law firm of Green,
18 Ketchum, Bailey, Walker, Farrell & Tweel? Do any of you have
19 any knowledge of anyone who works with that law firm? Please
20 raise your hand.

21 (No Response)

22 THE COURT: Any of you know or have any relationship
23 at all with the law firm of Shook, Hardy & Bacon?

24 (No Response)

25 THE COURT: Do you know anyone working with the law

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1 firm of Flaherty, Sensabaugh & Bonasso? Please raise your
2 hand.

3 (No Response)

4 THE COURT: The record should reflect that none of
5 the jurors raised their hand in response to the questions
6 regarding the law firm or knowledge of the lawyers.

7 Are any of you related to anyone else on the jury
8 panel? Please raise your hand.

9 (No Response)

10 THE COURT: Let me say to you ladies and gentlemen
11 that this case is a consolidated case of four plaintiffs. The
12 plaintiffs' claims involve allegations of personal injury from
13 a pelvic mesh product, a device that was implanted in the
14 plaintiff to treat stress urinary incontinence, or you might
15 hear us refer to it as SUI.

16 The plaintiffs allege that the defendant's pelvic
17 mesh product was defective in that they allege that its design
18 was not reasonably safe for its intended use and that it was
19 not accompanied by adequate warnings. The defendant denies
20 those allegations.

21 Without telling me what it is, please tell me if you
22 have heard or read anything about this specific case. Raise
23 your hand.

24 (No Response)

25 THE COURT: All right. Let me ask you if you or any

—Jury Selection—

1 immediate family member has had any experience, negative
2 experience with a medical device or medical device company.

3 Yes, ma'am.

4 PROSPECTIVE JUROR: Amanda Gates, Juror Number 20.
5 My mom had hernia mesh repair and she --

6 THE COURT: Let me, let me stop you there. You --
7 it's your mom who's had the experience?

8 PROSPECTIVE JUROR: Uh-huh. And my significant other
9 has a defibrillator pacemaker, and the pacemaker portion of
10 that unit quit working.

11 THE COURT: All right. We'll get into the nature of
12 it here just briefly.

13 Anyone else who has had any type of experience or a
14 family member, immediate family member with a medical device
15 or medical device company?

16 Yes, ma'am.

17 PROSPECTIVE JUROR: Juror 21, Annette Phillips. I
18 have a question if you don't mind. Are you meaning any
19 device, meaning knee replacement type?

20 THE COURT: If you have had an experience with a
21 medical device or medical device company, yes, ma'am.

22 PROSPECTIVE JUROR: Okay. I -- my mother-in-law --

23 THE COURT: All right.

24 PROSPECTIVE JUROR: -- has had knee replacement.

25 THE COURT: Sir.

—Jury Selection—

1 PROSPECTIVE JUROR: My grandmother, knee replacement.

2 THE COURT: All right. Yes, sir. State your name,
3 please.

4 PROSPECTIVE JUROR: Randall Matthews, Juror Number
5 32. My wife has a pacemaker defibrillator.

6 THE COURT: All right. Thank you.

7 Sir, you indicated that your grandmother had had a
8 knee replacement. Place your name and number on the record
9 for us, please.

10 PROSPECTIVE JUROR: Craig Aliff, Number 15.

11 THE COURT: Yes, ma'am.

12 PROSPECTIVE JUROR: Betty Elkins, Number 10. My
13 sister had a knee replacement and my husband had a dialysis
14 port put in.

15 THE COURT: All right.

16 Yes, ma'am, Number 12.

17 PROSPECTIVE JUROR: Juror Number 12, Margaret
18 Cordray. My mother had a port implanted for cancer treatment.
19 It has now been removed.

20 THE COURT: All right. Yes, ma'am.

21 PROSPECTIVE JUROR: Kristen Anderson, Juror Number 1.
22 My husband had a knee replacement.

23 THE COURT: All right. Thank you.

24 Yes, ma'am, Number 26.

25 PROSPECTIVE JUROR: Catherine Czeck, Number 26. I

—Jury Selection—

1 had a grandmother with a pacemaker.

2 THE COURT: All right. Yes, ma'am.

3 PROSPECTIVE JUROR: Cindy Powell, Juror 35. Both
4 grandmothers have had knee replacements and double knee
5 replacements.

6 THE COURT: Counsel, could you all hear that
7 response?

8 All right. Yes, ma'am.

9 PROSPECTIVE JUROR: Martha Ruble, Number 33. My
10 husband has double half knee replacement.

11 THE COURT: All right. Yes, ma'am in the back.

12 PROSPECTIVE JUROR: Gaynell Boggess, Number 5. My
13 sister's had both knees replaced.

14 THE COURT: Yes, ma'am.

15 PROSPECTIVE JUROR: Alice Mollohan, Number 18. My
16 husband has knee replacement.

17 THE COURT: Repeat your name and number for me,
18 please.

19 PROSPECTIVE JUROR: Alice Mollohan, 18.

20 THE COURT: All right. Thank you. Did I get
21 everyone?

22 (No Response)

23 THE COURT: All right. Thank you.

24 Any of you ladies and gentlemen of the jury have any
25 medical training above basic first aid or CPR?

—Jury Selection—

1 Yes, ma'am.

2 PROSPECTIVE JUROR: I'm Amanda Gates, ER nurse and
3 EMT and I've had paramedic training as well.

4 THE COURT: All right. Thank you.

5 Anyone else? Yes, sir.

6 PROSPECTIVE JUROR: Could you repeat the question?

7 THE COURT: I'll be happy to. Do any of you have any
8 medical training that's above first aid or CPR training?

9 PROSPECTIVE JUROR: Thank you.

10 THE COURT: Anyone else?

11 (No Response)

12 THE COURT: Let me ask you, ladies and gentlemen,
13 have any of you had any experience at all in engineering,
14 product development, product testing, design, or product
15 manufacturing? Please raise your hand.

16 Yes, ma'am.

17 PROSPECTIVE JUROR: Kristen Anderson, Juror Number 1.
18 I'm a mechanical engineer by trade.

19 THE COURT: All right. Tell me where you work,
20 please.

21 PROSPECTIVE JUROR: I work with DuPont.

22 THE COURT: All right. Here in the valley?

23 PROSPECTIVE JUROR: Uh-huh, Parkersburg.

24 THE COURT: All right. Thank you.

25 Yes, sir.

—Jury Selection—

1 PROSPECTIVE JUROR: William Boyle, Juror 17. My
2 training is chemical engineering and electrical engineering.
3 I work with DuPont also.

4 THE COURT: All right. And at what location?

5 PROSPECTIVE JUROR: Parkersburg.

6 THE COURT: All right. Did I miss anyone who has
7 experience in engineering, product development, product
8 testing, product design, or product manufacturing?

9 (No Response)

10 THE COURT: Have any of you or an immediate family
11 member had a dispute with a hospital or medical clinic
12 concerning your treatment or surgery? Please raise your hand.

13 All right. Yes, ma'am. Without giving me the
14 details, tell me whether -- state your name and your number
15 and tell me what it is, please.

16 PROSPECTIVE JUROR: Amanda Gates, Juror Number 20.
17 They missed my significant other's heart attack.

18 THE COURT: I'm sorry?

19 PROSPECTIVE JUROR: When I took my significant other
20 to the first ER, they missed his heart attack.

21 THE COURT: All right.

22 Counsel, let me see you here at the bench, please.

23 (Bench conference on the record)

24 THE COURT: In my review of the juror questionnaires
25 that were sent out, we have, gosh, I would think 13 or 14

—Jury Selection—

1 people who have some familiarity either through a family
2 member or otherwise with the device. It would seem to me that
3 this is as good a time as any to bring them to the bench so
4 that we can talk to them privately about that.

5 MS. WAGSTAFF: Okay.

6 THE COURT: And I think the nurse who has responded
7 to a number of questions is one of those people. So, it would
8 be well to take care of all of that at this juncture.

9 MR. ADAMS: All right.

10 THE COURT: Do we have everyone we need?

11 MR. MONSOUR: Yes, Your Honor.

12 THE COURT: Okay.

13 MR. FARRELL: Judge, do you have a particular order
14 that you would like to go or are you --

15 THE COURT: No. We'll -- no, but I would like to go
16 ahead and deal with Ms. Gates at this time.

17 MR. ADAMS: I think she's 20.

18 THE COURT: Okay.

19 Ms. Gates, would you join us here, please.

20 (Prospective Juror Amanda Gates approached the
21 bench.)

22 THE COURT: Good morning to you. Tell me about the,
23 your knowledge of this device, please.

24 PROSPECTIVE JUROR: The knowledge I have is what they
25 went over in our training in school per se. I had to put it

—Jury Selection—

1 down. But as far as going into actual specifics, my number
2 one question is about surgical procedures. I have no idea how
3 it's instilled into the body, but I do know some things a
4 little bit like what you would look for to take care of the
5 wound and stuff after it was instilled, that kind of thing.
6 But --

7 THE COURT: Would that have been part of your duties
8 as a nurse?

9 PROSPECTIVE JUROR: Uh-huh.

10 THE COURT: All right. What other, if any,
11 familiarity do you have with the device that's at issue here?

12 PROSPECTIVE JUROR: Device -- mesh in general or the
13 vaginal mesh?

14 THE COURT: The vaginal mesh.

15 PROSPECTIVE JUROR: Vaginal mesh, I don't have
16 anything.

17 THE COURT: All right. Do you consider -- you have
18 mentioned mesh in general. Do you have knowledge of mesh in
19 general as a result of your employment?

20 PROSPECTIVE JUROR: I've had one patient recently
21 come in because of that. My biggest dealing with mesh was the
22 case with my mother. It involved her, that kind of thing.
23 That was kind of stuck in my head as a child, as a teenager,
24 but just the lady we had at work.

25 THE COURT: Tell me about the experience with your

—Jury Selection—

1 mother if it involved mesh, please.

2 PROSPECTIVE JUROR: There was an issue with
3 infection. They ended up having to go back in, reopen her up.
4 The drains were pulled too soon and she spent a year and a
5 half trying to learn to walk and get up out of bed and that
6 kind of thing.

7 THE COURT: And what type of mesh device was that,
8 Ms. Gates?

9 PROSPECTIVE JUROR: I don't remember what mesh she
10 had. I was 15, 16 when this was instilled.

11 THE COURT: Okay. Any other experiences that you
12 have with the mesh device?

13 PROSPECTIVE JUROR: Other than my mother and work,
14 that's it, and school.

15 THE COURT: All right.

16 Counsel, do any of you have any questions that you
17 want to ask?

18 MR. ADAMS: I do.

19 Ms. Gates, I'm Rob Adams. I represent Boston
20 Scientific. As the Judge said, we're just trying to get a
21 fair trial and figure out, you know, who would be appropriate
22 on this jury or who could be appropriate on another jury.

23 Is it fair to say that the experience that your
24 mother had with the mesh was a bad experience?

25 PROSPECTIVE JUROR: Oh, yes.

—Jury Selection—

1 MR. ADAMS: Okay. And very memorable to you.

2 PROSPECTIVE JUROR: Pretty much. I remember when her
3 incision busted open from all the drainage that was filling up
4 inside of her. It's not really good for a 15-year-old to see
5 your mom's belly gaping open. So, --

6 MR. ADAMS: Okay. And this case is going to be about
7 polypropylene mesh. Do you believe that's the same type of
8 mesh that was put into your mom.

9 PROSPECTIVE JUROR: I don't know if it was the same
10 type that was put in her, but I just know that she had mesh in
11 her when she had the hernia repair done.

12 MR. ADAMS: Okay. And, obviously, the plaintiffs,
13 the ladies that were introduced earlier, they will claim that
14 they've had complications with the mesh. You understand that.

15 PROSPECTIVE JUROR: Uh-huh.

16 MR. ADAMS: Do you believe that based upon your
17 experience with your mother that you may tend to favor them
18 and their side of the case already before you've even heard
19 any evidence? And it's okay either way.

20 PROSPECTIVE JUROR: I'm going to have to say "yes" on
21 that one because I just remember what it was like for her and
22 the first time I saw her scream in the bedroom. I have to
23 sympathize with them a little bit. I empathize with you, but
24 I sympathize more with them. I'm sorry.

25 MR. ADAMS: No, you don't have to be sorry. You

—Jury Selection—

1 know, as the Judge said earlier, we're just looking for honest
2 answers. And you can't, you can't change your life
3 experience. But is it fair to say that based upon your life
4 experience you would probably be better suited to sit on
5 another jury that doesn't involve this type of product? Is
6 that fair.

7 PROSPECTIVE JUROR: Exactly.

8 MR. ADAMS: Okay. And, so, based upon what you
9 believe in your heart and what you've told the Court, I take
10 it that you believe right now you cannot be fair and impartial
11 with respect to the evidence. Is that fair.

12 PROSPECTIVE JUROR: Uh-huh.

13 MR. ADAMS: You've got to answer audibly.

14 PROSPECTIVE JUROR: Yes.

15 THE COURT: Mr. Farrell, any questions of this juror?

16 MR. FARRELL: No questions.

17 THE COURT: Given your responses, I'm going to
18 release you from any further service in this case.

19 Any objection anyone wants to place on the record?

20 MR. FARRELL: Just note the objection, preserve it,
21 please.

22 THE COURT: All right. You can go now.

23 PROSPECTIVE JUROR: I'm free to leave or what do I
24 need to do?

25 THE COURT: You can leave for the day. Thank you.

—Jury Selection—

1 PROSPECTIVE JUROR: Okay.

2 (Prospective Juror Amanda Gates excused)

3 THE COURT: Mr. Farrell, do you want to put your
4 specific objection on the record?

5 MR. FARRELL: I believe that having a bad experience
6 with mesh in and of itself is not a basis to strike. However,
7 given her responses, the fact that he so effectively drew out
8 answers from her that she couldn't be fair, I understand your
9 reasoning. We would just like to preserve the objection for
10 the record.

11 THE COURT: Well, I have stricken her based on her
12 answers. And I think it's clear to all of us here she was
13 trying to buy an out. So, she did so with the help of Mr.
14 Adams.

15 The ones that I have here, to answer your earlier
16 question, are in alphabetical order. And, so, it would be
17 beneficial to me to take them in that way.

18 MR. FARRELL: Judge, if you don't mind, I hope I'm
19 not being presumptuous, but there are two jurors that I would
20 like to make a proffer, the ones that answered engineering
21 questions about DuPont. And I don't know whether or not now
22 would be the right time to address that.

23 THE COURT: You want to make a proffer?

24 MR. FARRELL: Well, I would like to, to make a
25 proffer for the record of why we would like them struck for

—Jury Selection—

1 cause, and then ask permission to have some individual inquiry
2 conducted by yourself.

3 THE COURT: Let's reserve that. I will certainly
4 bring them here to the bench so that we can inquire further of
5 them after I hear your proffer, and then I'll make a decision
6 on challenge for cause. Let's deal with the device first and
7 then I'll be happy to bring them to the bench.

8 MR. FARRELL: Thank you.

9 THE COURT: I want to begin, counsel, with Kristen
10 Anderson.

11 Ms. Anderson, Kristen Anderson, would you please join
12 us here at the bench.

13 (Prospective Juror Kristen Anderson approached the
14 bench.)

15 THE COURT: Good morning to you.

16 PROSPECTIVE JUROR: Good morning.

17 THE COURT: Ms. Anderson, I wanted to inquire of you.
18 In reviewing your jury questionnaire, you indicated that a
19 friend had had some type of mesh surgery.

20 PROSPECTIVE JUROR: Uh-huh.

21 THE COURT: Tell me what you recall about that,
22 please.

23 PROSPECTIVE JUROR: I'm not exactly sure of the
24 details, but she had incontinence issues and had surgery to
25 hold her bladder up with that, and also had somekind of like

—Jury Selection—

1 pacemaker type thing installed. I'm not sure. But she had to
2 go back several times for additional surgeries to correct
3 issues. And I don't know the details of any of that. But --

4 THE COURT: All right. In this case, the plaintiffs,
5 as I've indicated to you, are alleging that the pelvic, or
6 vaginal mesh device that was implanted in them resulted in
7 complications. Is there anything about your knowledge of the
8 issue that your friend had that would prevent you from being
9 able to sit here fairly and impartially and base your verdict
10 only on the evidence that you hear in this courtroom?

11 PROSPECTIVE JUROR: No, not in that instance. But I
12 have another kind of struggle of a personal experience.

13 THE COURT: All right.

14 PROSPECTIVE JUROR: And that's working with a large
15 company, DuPont, and being at the Parkersburg facility where a
16 lot of individuals have hooked up with lawyers and sued
17 DuPont.

18 I'm in the business in the area that was part of the
19 C-8 litigation and we're now being spun off. And, so, I'm
20 losing my job with DuPont. And I really feel that if the
21 whole litigation part hadn't happened from all these
22 individuals that I might still be an employee of DuPont.

23 THE COURT: And is it your position that that
24 experience with DuPont would prevent you from being able to
25 sit fairly for the plaintiffs in this case?

—Jury Selection—

1 PROSPECTIVE JUROR: Uh-huh.

2 THE COURT: Am I understanding you correctly?

3 PROSPECTIVE JUROR: Uh-huh.

4 THE COURT: So, without hearing any evidence or
5 knowing anything about the case, you would already know that
6 you could not sit fairly for the plaintiffs?

7 PROSPECTIVE JUROR: Uh-huh.

8 THE COURT: Counsel, any questions?

9 MR. FARRELL: I'd just like the record to reflect
10 that her answers were in the affirmative.

11 THE COURT: All right. Thank you.

12 MR. ADAMS: Ma'am, the Court is going to give you
13 instructions, and I know the Court obviously has asked you
14 questions. But if the Court were to instruct you that you
15 have to be fair, you have to be impartial, you have to be
16 unbiased, could you follow those instructions.

17 PROSPECTIVE JUROR: I'm afraid I would struggle.

18 MR. ADAMS: Okay, understood.

19 THE COURT: Anything further?

20 MR. FARRELL: No, Judge.

21 THE COURT: All right.

22 Ms. Anderson, I am going to release you from any
23 further service in this case. You're free to leave.

24 PROSPECTIVE JUROR: Okay.

25 (Prospective Juror Kristen Anderson excused)

Jury Selection

1 MR. FARRELL: Judge, while we're on the topic, this
2 is the basis for what I was mentioning earlier. There's a
3 second individual who's also in DuPont management, Mr. Boyle,
4 Number 17. And for the very similar reasons that he's talking
5 about the C-8 litigation, we would ask for him to be struck
6 for cause.

7 THE COURT: Mr. Boyle also is the next juror that I
8 wanted to bring up for --

9 MR. FARRELL: Before we --

10 THE COURT: -- individual *voir dire* based on his
11 answers that his wife had had a bladder sling.

12 MR. FARRELL: Yes.

13 MR. MONSOUR: Yes.

14 THE COURT: What number did you tell me it was?

15 MR. FARRELL: 17. Before you do so, for your own
16 information, would you like me to make the proffer about the
17 C-8 litigation?

18 THE COURT: Go ahead. I can see it's just bubbling
19 over in you, Mr. Farrell.

20 MR. FARRELL: I apologize. It's something I know a
21 good deal about.

22 The Parkersburg facility of DuPont is also a
23 polypropylene resin manufacturer. In their manufacturing
24 process it was alleged that they were discharging C-8 into the
25 air as well as into the surface water.

—Jury Selection—

1 And in the early 2000s, several lawsuits were filed
2 including by lawyers in Charleston, West Virginia, alleging
3 the contamination as well of the environment as well as
4 personal injuries.

5 A settlement was reached sometime around 2003 or 2004
6 of some \$70 million which included the testing and remediation
7 of some of the environmental ground water, as well as massive
8 medical monitoring of blood samples from the residents of Wood
9 County.

10 Those results were then sent to a scientific panel.
11 This was a scientific panel that was paid for out of the
12 settlement with renowned scientists around the country to
13 study a causal link between C-8 and some carcinogens.

14 The link between this manufacturing process and the
15 disease process was very hotly disputed. The science panel
16 recently came back with its findings and it found causal
17 links.

18 As a result, this year in 2014 some 2,000 lawsuits
19 have been filed against DuPont. It's been given MDL status in
20 Columbus and has been in the newspapers here in Charleston, as
21 well as Wood County extensively.

22 DuPont has issued a statement regarding the science
23 panel and the filing of these lawsuits. And this is the West
24 Virginia DuPont facility. Part of their statement includes,
25 quote, "Lawsuits such as these ignore family history,

—Jury Selection—

1 life-style choices, and other causes of health issues and
2 disease in specific individuals."

3 The statement goes on to say that DuPont will, quote,
4 "vigorously defend against any and all such lawsuits not based
5 upon valid science."

6 So, this is a litigation that shares a lot of
7 similarities to the litigation that we have both procedurally
8 and substantively. It involves a polypropylene manufacturing
9 facility.

10 The Juror Number 17 has identified himself as in
11 management of this DuPont facility. He's identified himself
12 as a chemical engineer. And what we would ask is for you to
13 inquire whether or not he's familiar with the C-8 litigation
14 and whether or not he has a financial interest in DuPont
15 because if he is a stockholder in DuPont, we believe that his
16 sitting on a jury here against a company that is, has
17 potential punitive damages, as Boston Scientific does in this
18 case, he might be weary of being fair in reaching a verdict
19 and awarding damages that may set some baseline or trend or
20 have a negative impact upon his own company where he serves in
21 management and probably has some type of investment.

22 THE COURT: Okay. Let me call him here to the bench.
23 Mr. Boyle, would you join us, please.

24 (Prospective Juror William Boyle approached the
25 bench.)

—Jury Selection—

1 THE COURT: Good morning, Mr. Boyle.

2 PROSPECTIVE JUROR: Good morning.

3 THE COURT: In your jury questionnaire that you
4 returned, I reviewed it and you've indicated that your wife
5 had a bladder sling. Is that correct?

6 PROSPECTIVE JUROR: That is correct.

7 THE COURT: Tell me about that, please. How long ago
8 was it?

9 PROSPECTIVE JUROR: It was the late '90s or 2000. It
10 was '99 or so. It was a process from child birth. The
11 bladder, as I understand it from the physician, dropped. And
12 I travel a lot of times, so I really didn't attend the OB/GYN.

13 I don't think they put a mesh in. As I understand,
14 what he did was he went in somehow and sutured the bladder up
15 so that it would contain urine and allow her to be able to go
16 to the bathroom. Her problem was not really incontinent. She
17 just didn't have any capacity. So, she was constantly going
18 to the bathroom because she didn't have any place for it to
19 hold.

20 So, he just -- as I understood, they just went in
21 vaginally and tacked it up. They called it a sling. But I
22 don't think there was -- to my knowledge, I don't think there
23 was an implant.

24 THE COURT: All right. In this case, you've heard me
25 state what the plaintiffs' allegations are.

—Jury Selection—

1 PROSPECTIVE JUROR: Uh-huh.

2 THE COURT: Is there anything about your wife's
3 procedure now that you have just a brief summary of the
4 allegations in this case that would prevent you from sitting
5 fairly and impartially?

6 PROSPECTIVE JUROR: I don't believe so, no.

7 THE COURT: Tell me about your position with Dow,
8 please.

9 PROSPECTIVE JUROR: Mine is with DuPont.

10 THE COURT: With DuPont, yes.

11 PROSPECTIVE JUROR: I'm a safety, health, and
12 environmental engineer. So, I, I get to deal with the court a
13 little bit on PFOA issues, the C-8 product liability from that
14 perspective.

15 THE COURT: Tell me about the C-8 liability you just
16 made reference to.

17 PROSPECTIVE JUROR: I normally deal with our counsel
18 here in Charleston which is Spilman. And then the plaintiffs'
19 counsel is Deitzler, Bee & Carper. So, I'm involved with
20 those, you know, on a -- I wouldn't say routine basis, but a
21 monthly basis getting information back and forth per the
22 Court's request.

23 THE COURT: All right. Over what time period have
24 you done that?

25 PROSPECTIVE JUROR: I started my position in 2006.

—Jury Selection—

1 So, I've been doing it for the last nine years.

2 THE COURT: Okay.

3 PROSPECTIVE JUROR: I wasn't involved with the
4 original filings, but since 2006.

5 THE COURT: Tell me about the nature of those
6 filings, please.

7 PROSPECTIVE JUROR: Basically, it's discovery,
8 documents, and things like that that the court would request.
9 It could be e-mails. It could be history, technical
10 information on brochures and things like that. We call them
11 process hazard surveys, anything that would pertain to
12 technology, engineering that would be useful for the court,
13 either side, plaintiff or defendant.

14 THE COURT: Do you have any financial interest at all
15 in DuPont?

16 PROSPECTIVE JUROR: I have my current SIP plan from
17 that perspective for DuPont, yes.

18 THE COURT: Tell me about that.

19 PROSPECTIVE JUROR: That's my Savings and Investment
20 Plan which I can move in and out. Currently I don't have a
21 lot of holdings because I sold earlier. But I, I do buy in
22 and out on a frequent basis a couple times a year depending on
23 what the market conditions are doing.

24 THE COURT: Okay. One of the substances that, that's
25 very much involved in this litigation is polypropylene. Does

—Jury Selection—

1 your company have anything to do with that substance?

2 PROSPECTIVE JUROR: No, we don't manufacture
3 polypropylene.

4 THE COURT: All right. Any lawsuits pending against
5 DuPont that you're currently involved in?

6 PROSPECTIVE JUROR: The PFOA litigation. There's
7 several other ones that will come up, asbestos related claims.
8 There could be -- there's none currently. There's a couple
9 asbestos ones that we look through.

10 The current one is the one with what we call a
11 probable link for filing various conditions that we're dealing
12 with currently today and I dealt with last week. I was
13 involved in discovery for those.

14 THE COURT: Is there anything about your position in
15 the course of your employment in dealing with lawsuits that
16 are pending against your employer that would cause you to
17 believe that you cannot sit fairly and impartially --

18 PROSPECTIVE JUROR: Not to my knowledge, no.

19 THE COURT: -- in this case? These lawyers may have
20 some specific questions for you I'm going to permit them to
21 ask.

22 PROSPECTIVE JUROR: That's fine.

23 THE COURT: Mr. Farrell, yes.

24 MR. FARRELL: Yes. I don't want you to, to tell me
25 what your opinion is, but I want to know whether you hold some

—Jury Selection—

1 opinions. Do you have any opinions as to the results recency
2 reported by the science panel in the C-8 litigation?

3 PROSPECTIVE JUROR: No. I think the results were
4 fine from an opinion basis. Now, my belief is from the
5 science standpoint there's no probable link with those five
6 cases that are there from that, from the standpoint of
7 science. Is there, is there causality? No. There may be a
8 link, but there's no cause.

9 MR. FARRELL: Do you have an opinion as to the merits
10 of the lawsuits that were filed against DuPont?

11 PROSPECTIVE JUROR: I think they were meritless from
12 an engineering standpoint, from my perspective, yes.

13 MR. FARRELL: Do you have an opinion about the impact
14 that those meritless lawsuits have on DuPont's stock price?

15 PROSPECTIVE JUROR: Overall probably not, but I'm
16 sure it wasn't positive. But was it detrimental to the
17 company? I'd say not in aggregate when you're talking
18 billions of dollars. The lawsuit probably did not. But --

19 MR. FARRELL: Do you routinely work with the defense
20 lawyers regarding the C-8 litigation?

21 PROSPECTIVE JUROR: Yes.

22 MR. FARRELL: Have you been involved with their
23 discussions on litigation strategy and tactics?

24 PROSPECTIVE JUROR: No.

25 MR. FARRELL: Have you been involved with them with

—Jury Selection—

1 regard to the science of the C-8 and causal damages?

2 PROSPECTIVE JUROR: The science, yes, but not
3 causality for damages, but just the science around that
4 particular factor, yes.

5 MR. FARRELL: Have you been deposed?

6 PROSPECTIVE JUROR: No.

7 MR. FARRELL: Are you -- have you been involved with
8 risk management for DuPont?

9 PROSPECTIVE JUROR: Yes, I do that, yeah.

10 MR. FARRELL: And --

11 PROSPECTIVE JUROR: When you say -- well, let me
12 clarify. Your definition -- mine is from a process
13 standpoint, not risk management from a financial legality from
14 legal lawsuits.

15 MR. FARRELL: Okay. Are you familiar with an MSDS?

16 PROSPECTIVE JUROR: Yes. It's SDS.

17 MR. FARRELL: SDS. In this case there may be
18 evidence introduced that involves polypropylene and the
19 Material Safety Data Sheet. Do you have personal experience
20 and background with the publication of Material Safety Data
21 Sheets?

22 PROSPECTIVE JUROR: I do, yes, with material for
23 DuPont, yeah. That's part of my role.

24 MR. FARRELL: Okay. Are you familiar with the
25 difference between medical grade and non-medical grade

—Jury Selection—

1 polypropylene?

2 PROSPECTIVE JUROR: No.

3 MR. FARRELL: Your processing plant in Parkersburg,
4 it doesn't do any polypropylene resin manufacturing?

5 PROSPECTIVE JUROR: No. Polyethylene, but not
6 polypropylene. We use polyethylene on a regular basis.

7 MR. FARRELL: Do you deal in your Parkersburg
8 facility with any additives in the manufacture of
9 polypropylene or polyethylene resin?

10 PROSPECTIVE JUROR: We use additives with
11 polyethylene. But, again, we don't use polypropylene.

12 MR. FARRELL: Right. So, with the polyethylene
13 additives at your facility, in your role as a chemical
14 engineer do you understand the oxidation process --

15 PROSPECTIVE JUROR: Uh-huh.

16 MR. FARRELL: -- and the degradation or possible
17 degradation of polypropylene and polyethylene?

18 PROSPECTIVE JUROR: Yes.

19 MR. FARRELL: These experiences and this background
20 that you have, would you be able to put aside your personal
21 relationship with DuPont and listen to the evidence in this
22 case about another manufacturer?

23 PROSPECTIVE JUROR: Yes.

24 MR. FARRELL: Do you believe that you would be able
25 to fairly sit in judgment on a case against a manufacturer

—Jury Selection—

1 of -- or against a corporation in this case, Boston
2 Scientific, even though you are defending a corporation in
3 this similar posture of the multi-district litigation?

4 PROSPECTIVE JUROR: To the best of my ability, yes.

5 MR. FARRELL: So, if your ability -- to the best of
6 your ability, would you still be able to be fair, though?

7 PROSPECTIVE JUROR: Yes.

8 THE COURT: Mr. Boyle, let me ask you in response to
9 one of counsel's questions, you indicated that you have some
10 familiarity with degradation and oxidation of polypropylene.

11 PROSPECTIVE JUROR: Not polypropylene, polyethylene.

12 THE COURT: Okay.

13 PROSPECTIVE JUROR: We don't use -- for clarity, we
14 do not use, manufacture polypropylene. We use polyethylene as
15 a purge material for extrusion. There is degradation that
16 occurs with heat when you, when you heat that in an extruder
17 and it does produce by-products.

18 THE COURT: Do you -- I'm sorry. I didn't mean to
19 cut you off.

20 PROSPECTIVE JUROR: No.

21 THE COURT: Do you have an opinion as to oxidation
22 and degradation of polypropylene?

23 PROSPECTIVE JUROR: I'm not familiar with that
24 particular chemistry. I am with polyethylene, yes.

25 THE COURT: All right.

—Jury Selection—

1 PROSPECTIVE JUROR: I'm familiar from a chemistry
2 standpoint, but I haven't done that for years.

3 THE COURT: In other words, you may hear some
4 testimony in this case --

5 PROSPECTIVE JUROR: Uh-huh.

6 THE COURT: -- about oxidation and degradation of
7 polypropylene. I want to ask you whether or not your
8 experiences with your company will enter into your
9 deliberations on the issue or will you be able to base your
10 opinion solely on what you hear as evidence here in the
11 courtroom?

12 PROSPECTIVE JUROR: I think I could base it on the
13 evidence that's in the courtroom.

14 THE COURT: All right. Mr. Adams.

15 MR. ADAMS: The only question -- I take it you -- if
16 the Court gives you an instruction that you have to be fair
17 and impartial to both sides, you'll be able to do that. Is
18 that right.

19 PROSPECTIVE JUROR: Uh-huh.

20 MR. ADAMS: Your answer is "yes".

21 PROSPECTIVE JUROR: Yes, sir.

22 THE COURT: Anything further?

23 MR. MONSOUR: I do have --

24 MR. FARRELL: To your knowledge, does DuPont in any
25 other capacity manufacture polypropylene, meaning in some

—Jury Selection—

1 facility other than the Parkersburg facility?

2 PROSPECTIVE JUROR: I'm sure we do. I'm just not
3 familiar with those. I mean, in all honesty, the answer is I
4 don't know, but my guess is that we probably do --

5 THE COURT: All right. Thank you.

6 PROSPECTIVE JUROR: -- in the broad scheme.

7 THE COURT: Thank you, Mr. Boyle.

8 (Prospective Juror William Boyle returned to the jury
9 box.)

10 THE COURT: Mr. Farrell.

11 MR. FARRELL: Yes. Judge, given the fact that we
12 have started with a panel of 35, we believe that this juror
13 would pose significant problems to a fair jury trial.

14 Number one, we believe that based on his background
15 as a chemical engineer at a manufacturing facility, he
16 potentially can serve as a super juror and bring with him his
17 own expertise and his own background into the jury room which
18 could influence the way that other jurors hear the evidence.
19 That's one significant concern.

20 The second concern that we have is his heavy
21 involvement in the C-8 litigation which is a product liability
22 claim that involves punitive damages coming from West
23 Virginia, has MDL status, and is in the pipeline with regard
24 to resolution.

25 Given the fact that he has admitted to having a

—Jury Selection—

1 financial stake in DuPont and the fact that he is heavily
2 involved in the litigation process, we believe that while he
3 states he can be fair to the best of his ability, we
4 respectfully submit that his best ability may not be fair to
5 our clients and ask you to strike him for cause.

6 MR. MONSOUR: Can I add one thing, Your Honor?

7 THE COURT: Yes, sir.

8 MR. MONSOUR: I hate to -- I know you don't want to
9 hear every voice up here, but there's one thing that I know.
10 There is an MSDS sheet that has been used in the depositions
11 in the Boston Scientific litigation that mentions both -- it's
12 for the Marlex resin that they use, and it talks about both
13 Marlex polypropylene and polyethylene. So, it applies to both
14 products.

15 I don't know whether that MSDS sheet will come in. I
16 just wanted to advise you that it might come into evidence in
17 this case.

18 MR. ADAMS: And on that point, Judge Goodwin in his
19 order on the motion *in limine* excluded the polyethylene MSDS
20 because it doesn't have anything to do with the case. So,
21 we're back to the position that he, this juror has said he
22 doesn't know about polypropylene and he does know about
23 polyethylene, but that doesn't have anything to do with the
24 case.

25 THE COURT: I've had the opportunity to listen to

—Jury Selection—

1 this juror respond to extensive questioning. Looking and
2 judging his demeanor and his credibility, quite frankly, even
3 with the knowledge and his employment, I'm not convinced that
4 either side could ask for someone who gives the impression
5 that he's going to make every single effort to be fair and
6 impartial.

7 He has indicated that he does not have any knowledge
8 of polypropylene. He has also given us in-depth answers about
9 his role at DuPont with respect to the C-8 litigation. He has
10 indicated that he is involved in discovery going back and
11 forth.

12 I think it's fair to state, Mr. Farrell, that he has
13 a good amount of knowledge about that litigation, but I have
14 no basis to indicate that that is going to result in his being
15 unfair and impartial to both the plaintiffs and defendant in
16 this particular case.

17 I think, quite frankly, that your proffer and his
18 situation would certainly lend one to -- red flags to go up.
19 But after listening to you question him, listening to his
20 responses, and judging his demeanor as he answered, I believe
21 that this juror is in a position to sit fairly and
22 impartially.

23 I'm going to deny the challenge for cause as to Mr.
24 Boyle and preserve an objection and exception.

25 All right. Counsel, I will note for you all that in

—Jury Selection—

1 my review we had four jurors who answered simply "yes" with
2 respect to commercials which I made note of. And I am going
3 to ask that question of the full panel if there's nothing else
4 attached to their response as opposed to bringing them here to
5 the bench.

6 MR. ADAMS: That's fine.

7 THE COURT: If you want to pose an objection, I'll
8 certainly hear you.

9 Let me ask, please, that Ms. Burdette, Ms. Jessica
10 Burdette join us here at the bench.

11 (Prospective Juror Jessica Burdette approached the
12 bench.)

13 THE COURT: Good morning.

14 PROSPECTIVE JUROR: Good morning.

15 THE COURT: Ms. Burdette, in my review of your jury
16 questionnaire --

17 PROSPECTIVE JUROR: Uh-huh.

18 THE COURT: -- I believe you indicated your
19 grandmother had had surgery for incontinence twice.

20 PROSPECTIVE JUROR: Yes.

21 THE COURT: And I believe that you indicated that
22 that surgery was unsuccessful.

23 PROSPECTIVE JUROR: That is correct.

24 THE COURT: Tell me the nature of the surgery to the
25 best of your knowledge.

—Jury Selection—

1 PROSPECTIVE JUROR: I can't. This happened before I
2 was even born. She's 90 years old. So, I can't tell you the
3 nature.

4 I do know that the first time was using some type of
5 sling. The second time was an attachment to her pelvis.
6 So -- and neither one was successful. She's still
7 incontinent.

8 THE COURT: And you've heard me tell you just a brief
9 summary of the plaintiffs' claims in this case. Your
10 grandmother having had surgery before you were born and given
11 your knowledge of what type of surgery that was, is that going
12 to prevent you from being able to sit fairly and impartially
13 for both the plaintiffs and the defendant in this case?

14 PROSPECTIVE JUROR: No, ma'am.

15 THE COURT: In other words, I'm going to give you
16 some instructions on the law. You will hear witnesses
17 testify. And as jurors, you all are the judges of the facts.
18 And, so, you will be applying that law that I give you to the
19 facts that you've heard.

20 Is there anything that you know about your
21 grandmother's situation that's going to enter into this
22 courtroom? I am going to instruct you all that the verdict
23 has to be based solely on the evidence in this courtroom and
24 on the instructions of the law.

25 PROSPECTIVE JUROR: No, ma'am. The only thing that

—Jury Selection—

1 would sway my decision is if it would interfere with my
2 beliefs. And that's -- I'm -- that's higher than any law. I
3 will not --

4 THE COURT: Tell me about the beliefs. What are you
5 referring to?

6 PROSPECTIVE JUROR: I'm a Christian and if it goes
7 against God's word, I will, I will not agree with the law that
8 is in place such as homosexuality being an okay thing for
9 marriage. I do not agree with that law.

10 THE COURT: And you understand that that's not a part
11 of this case?

12 PROSPECTIVE JUROR: Yes, I do.

13 THE COURT: But I am going to instruct you on the
14 applicable law. And as a juror, you're under an oath to
15 follow that law. This case has nothing to do with
16 homosexuality. I don't know what other areas you might be
17 referring to.

18 PROSPECTIVE JUROR: Sure.

19 THE COURT: But it is absolutely crucial that jurors
20 follow the instructions of law that's going to be given to
21 them.

22 Is it your belief that you can do that?

23 PROSPECTIVE JUROR: I do believe I can do that, yes.

24 THE COURT: All right. You have also seen some
25 advertisements. Tell me what you recall seeing.

—Jury Selection—

1 PROSPECTIVE JUROR: Just if you know someone that's
2 had injuries due to a pelvic mesh situation, that's it, call a
3 certain law firm.

4 THE COURT: Okay. Anything about those
5 advertisements, Ms. Burdette, that would cause you to already
6 have some idea of how this case should be resolved or prevent
7 you from being able to sit fairly and impartially as a juror?

8 PROSPECTIVE JUROR: No, ma'am.

9 THE COURT: Okay.

10 Counsel, do either of you have any questions?

11 MR. FARRELL: I do, a couple of follow-up questions.

12 With regard to homosexuality, do you have a strong
13 position regarding homosexuality itself or just civil unions?

14 PROSPECTIVE JUROR: Just homosexuality itself.

15 MR. FARRELL: So, your beliefs -- you said earlier it
16 violates your beliefs. You oppose not only civil unions but
17 also homosexuality itself?

18 PROSPECTIVE JUROR: That's correct.

19 MR. FARRELL: And why is that?

20 PROSPECTIVE JUROR: It goes against God's word.

21 MR. FARRELL: Would you be able to sit and -- would
22 you be able to treat a homosexual the same as you would be
23 able to treat a heterosexual?

24 PROSPECTIVE JUROR: In this case?

25 MR. FARRELL: In any case.

—Jury Selection—

1 PROSPECTIVE JUROR: Yes.

2 MR. FARRELL: Do you put them on the same level?

3 PROSPECTIVE JUROR: Yes. The union itself does
4 not -- as a person, they are an individual. When it comes to
5 their sexuality, it's, it's different.

6 MR. FARRELL: Right. Do you --

7 THE COURT: Let me make sure I understood your
8 answer. Don't let me put words in your mouth, Ms. Burdette.
9 It is the marriage or the union that you believe is against
10 God's word, not the person?

11 PROSPECTIVE JUROR: The person themselves always has
12 the right to confess their sin against God's word. So,
13 that -- you know, that's between them and God. But placing a
14 sin into law, that's what I'm against.

15 MR. FARRELL: Do you believe that, that homosexuality
16 is immoral?

17 PROSPECTIVE JUROR: Yes, I do.

18 MR. FARRELL: Do you believe that if somebody is
19 engaging in a homosexual relationship that they are committing
20 a sin against God?

21 PROSPECTIVE JUROR: Yes, I do.

22 MR. FARRELL: No further questions.

23 THE COURT: Mr. Adams.

24 MR. ADAMS: Just a couple questions. The experience
25 that your grandmother had with the mesh and the operation, do

—Jury Selection—

1 you know whether it was unsuccessful because of the mesh or do
2 you have any idea.

3 PROSPECTIVE JUROR: I do not. I do not. I do know
4 she's had several pregnancies, 10 to 12 children. So, --

5 MR. ADAMS: So, before walking into this courtroom,
6 had you heard any negative information about the use of mesh
7 and female incontinent surgeries.

8 PROSPECTIVE JUROR: No, sir.

9 MR. ADAMS: Okay. I don't have any other questions.

10 THE COURT: Anything further, counsel?

11 MR. FARRELL: Nothing further.

12 MR. MONSOUR: Nothing further.

13 THE COURT: All right. Thank you, Ms. Burdette.

14 MR. ADAMS: Ma'am, could I have one more question.

15 THE COURT: Ms. Burdette.

16 MR. ADAMS: I was quick on the draw. I'm sorry.
17 That was my fault. The Court will give you an instruction in
18 this case saying that you have to be fair and impartial and
19 base your decision solely on the evidence presented at this
20 trial. Will you be able to do that.

21 PROSPECTIVE JUROR: Absolutely.

22 MR. ADAMS: All right. Thank you.

23 THE COURT: Mr. Farrell.

24 MR. FARRELL: Yes. I'd like to make a quick
25 statement and Mr. Monsour would also like to add something.

—Jury Selection—

1 But I would like to point out that one of our clients is a
2 homosexual and she was asked repeatedly about it by Boston
3 Scientific on direct. This witness said that she would place
4 her personal beliefs above the law and that she thinks that my
5 client's behavior is amoral and a sin against God. And I
6 think that that puts an unfair bias of her experience and
7 judgment. I don't think she would be an appropriate juror and
8 I would ask to strike her for cause.

9 THE COURT: I would agree with you on all of that and
10 I'll give you an opportunity to speak except it was my
11 understanding from my review of the motions *in limine* that
12 that was not to come into the trial.

13 MR. MONSOUR: It's not going to come in, Your Honor,
14 but there is a decent chance that Tammy, the significant
15 other, is here in the courtroom with Ms. Wilson. And if a
16 juror like that were to see that and put two and two together,
17 we would be starting off in a very poor position.

18 I mean, we're not -- I don't think it's fair for us
19 to ask Ms. Wilson not to invite her significant other who
20 she's been in a 20-year monogamous relationship with to not
21 come up to the courthouse just because they're lesbians. I
22 don't think that's fair.

23 THE COURT: No, and I wouldn't ask that of, of your
24 client. I guess my hesitancy -- because certainly if it is
25 available information, this juror, I think even Mr. Adams

—Jury Selection—

1 would agree, should be gone. I just don't know that the
2 person being here in the courtroom is going to be such that it
3 makes the relationship something that the jurors --

4 MR. MONSOUR: I don't know that it necessarily will,
5 Your Honor, but they have, they have a son that's technically
6 not Ms. Wilson's but she calls him her son. He has Down's
7 Syndrome. We were going to talk about the family and the
8 raising. The issue could come up. And if the issue comes up,
9 we've got a juror --

10 THE COURT: Uh-huh.

11 MR. MONSOUR: I, I want to like Rob. I like Rob.
12 We're friends. He's a good person. I want to win this case
13 and I want to try to win this case on fair rules. I don't
14 want to lose it based on prejudice. I just don't think that's
15 fair.

16 MR. ADAMS: Your Honor, with respect --

17 THE COURT: If opposing counsel corrected me when I
18 was trying cases, it gave me pause for concern. Go ahead.
19 I'm sorry.

20 MR. ADAMS: I was just going to say the issue --
21 Judge Goodwin has excluded that, and I think a fair inference
22 for this jury could be that her partner -- maybe her sister,
23 good friends. So, the fact that she's going to be here I
24 don't think raises anything. And we'll be careful not to
25 raise any inference and I'm sure they will be too.

—Jury Selection—

1 THE COURT: Let me, let me tell you all what concerns
2 me about this juror. What concerns me is that I don't know
3 the extent of God's law. She says that she could follow the
4 instructions unless they were against God's law. And I can't
5 question her all day long about what is God's law or what
6 isn't. That's what concerns me about this particular juror.

7 Depending on my instructions and how she views those,
8 she has indicated that there is, there are situations where
9 she would not follow them. That is my concern about this
10 juror.

11 And for that reason, I'm going to strike her from any
12 further service in this case. And I will preserve an
13 objection and exception if you want on the record.

14 MR. ADAMS: Thank you. And I do just incorporate
15 those statements earlier that she could be fair and impartial
16 given your instruction and following the evidence. But I
17 understand the Court's ruling.

18 THE COURT: I preserve the defendant's objection and
19 exception to my ruling relative to Ms. Burdette.

20 Ms. Burdette, would you join us here, please.

21 (Prospective Juror Jessica Burdette approached the
22 bench.)

23 PROSPECTIVE JUROR: I'm just causing all kinds of
24 trouble.

25 THE COURT: No, you didn't. What you've done is

—Jury Selection—

1 you've been very honest and forthright, which is exactly what
2 I've asked of you and which is exactly what these parties
3 want.

4 I am going to make every effort to see to it that the
5 jurors can follow all of the instructions of law that I'm
6 going to give. And in that regard and in an abundance of
7 caution, I'm going to release you from any further service in
8 this case.

9 PROSPECTIVE JUROR: Okay.

10 THE COURT: Please know how much we appreciate your
11 being honest. Oftentimes things come out in the jury room
12 during deliberations that should come out here. So, thank you
13 very much.

14 PROSPECTIVE JUROR: You're welcome.

15 (Prospective Juror Jessica Burdette excused)

16 THE COURT: Okay. We're moving at a snail's pace.
17 Ms. Cole, could we see you here, please.

18 (Prospective Juror Gaylen Cole approached the bench.)

19 THE COURT: Good morning to you.

20 PROSPECTIVE JUROR: Good morning.

21 THE COURT: Ms. Cole, in my review of your jury
22 questionnaire you indicated that you had a supervisor who had
23 had some surgery or something to do with the mesh. Can you
24 tell us what you know about that, please?

25 PROSPECTIVE JUROR: She didn't give -- it's been a

—Jury Selection—

1 while back. She didn't give me any details. I just know that
2 she at some point had some mesh inserted to do with -- I don't
3 know if it was a pelvic drop or -- really, I don't know. I
4 just want to be as forthright as possible.

5 THE COURT: Okay.

6 PROSPECTIVE JUROR: She didn't give me any details
7 and I no longer work with her.

8 THE COURT: Okay. Do you have a relationship with
9 her at all still?

10 PROSPECTIVE JUROR: No, ma'am.

11 THE COURT: Let me ask you this. You've heard my
12 brief, very brief summary of what I expect this case to be
13 about.

14 PROSPECTIVE JUROR: Uh-huh.

15 THE COURT: Is there anything that you know about
16 your supervisor's situation that would prevent you from
17 sitting fairly and impartially as a juror in this case?

18 PROSPECTIVE JUROR: No, ma'am.

19 THE COURT: I am also going to instruct you all that
20 you can base your verdict only on the evidence you hear in
21 this courtroom and the instructions of law that I give to you.

22 Do I have your assurance that anything you've heard
23 from your supervisor will not enter into your consideration of
24 this case?

25 PROSPECTIVE JUROR: Yes, ma'am, especially since I

—Jury Selection—

1 know so little.

2 THE COURT: Counsel, any questions of this lady?

3 MR. FARRELL: No questions.

4 MR. ADAMS: Just a quick question. Do you have any
5 information as to whether the experience that your supervisor
6 had with the mesh was positive, negative, or is it just a
7 neutral or you just don't know.

8 PROSPECTIVE JUROR: I assume it must have been
9 positive because she never complained. But that's purely an
10 assumption.

11 MR. ADAMS: Okay.

12 PROSPECTIVE JUROR: So, kind of a neutral.

13 MR. ADAMS: So, you really don't know.

14 PROSPECTIVE JUROR: Don't know.

15 MR. ADAMS: Again, can you follow the Court's
16 instructions and be fair and listen to all the evidence and
17 reach a just decision.

18 PROSPECTIVE JUROR: Yes.

19 MR. ADAMS: Thank you.

20 THE COURT: Ma'am, just a second.

21 MR. FARRELL: No questions.

22 MR. ADAMS: I don't have anymore.

23 THE COURT: Thank you.

24 (Prospective Juror Gaylen Cole returned to the jury
25 box.)

—Jury Selection—

1 THE COURT: Ms. Betty Elkins, would you join us here,
2 please.

3 (Prospective Juror Betty Elkins approached the
4 bench.)

5 THE COURT: Good morning.

6 PROSPECTIVE JUROR: Good morning.

7 THE COURT: In my review of your jury questionnaire
8 you have indicated that you had a co-worker with a hernia mesh
9 repair. Is that correct?

10 PROSPECTIVE JUROR: Yes, ma'am.

11 THE COURT: When was that?

12 PROSPECTIVE JUROR: Probably six months ago.

13 THE COURT: Okay.

14 PROSPECTIVE JUROR: And, in fact, she's been in
15 intensive care. Like three weeks ago she almost died and
16 she's facing another surgery this Tuesday. Possibly it got
17 infected, the mesh got infected. And she's -- it's not
18 getting well. So, they may have to do another surgery, take
19 the mesh out and do something else. I'm not sure what they'll
20 do.

21 THE COURT: Okay. You've heard my brief, very brief
22 summary about what this case is about.

23 PROSPECTIVE JUROR: Yes, ma'am.

24 THE COURT: Is there anything about your co-worker's
25 surgery that's going to prevent you from sitting fairly for

Jury Selection

1 the plaintiffs and the defendant in this case? We're talking
2 about a pelvic sling --

3 PROSPECTIVE JUROR: Uh-huh.

4 THE COURT: -- in this case.

5 PROSPECTIVE JUROR: I don't believe so, no, ma'am.

6 THE COURT: Okay. I am going to give you
7 instructions in this case, Ms. Elkins, that you can base any
8 verdict only upon the evidence --

9 PROSPECTIVE JUROR: Uh-huh.

10 THE COURT: -- and the instructions of law that I
11 give to you. Do I have your assurance that you can do that?

12 PROSPECTIVE JUROR: Yes, ma'am.

13 THE COURT: In other words, if you hear a witness
14 testify anything about mesh or you go to the jury
15 deliberations room and begin discussion about mesh, do I have
16 your assurance that what has happened with your co-worker will
17 not enter into that at all?

18 PROSPECTIVE JUROR: Yes, ma'am.

19 THE COURT: Okay. Counsel, any questions?

20 MR. FARRELL: No questions.

21 MR. ADAMS: May I proceed, Your Honor.

22 THE COURT: Yes, sir.

23 MR. ADAMS: Thank you.

24 Ma'am, I just have some questions for you. You
25 mentioned your co-worker. Are you friends and close with your

—Jury Selection—

1 co-worker?

2 PROSPECTIVE JUROR: Yes. We work in a real small
3 area and there's like five of us and we're real close.

4 MR. ADAMS: Okay. So, it's a situation where you're
5 spending a lot of time with her on a personal basis throughout
6 the day. Is that fair.

7 PROSPECTIVE JUROR: Yes, at least eight hours a day.

8 MR. ADAMS: Okay. And it seems like you have been
9 very informed about her medical conditions. Is that correct.

10 PROSPECTIVE JUROR: Yes, sir.

11 MR. ADAMS: Have you been talking with her, you know,

12 --

13 PROSPECTIVE JUROR: Yes.

14 MR. ADAMS: -- on an on-going basis about her
15 problems.

16 PROSPECTIVE JUROR: Yes, daily we were in contact
17 with her.

18 MR. ADAMS: And have you visited her in the hospital.

19 PROSPECTIVE JUROR: Yes.

20 MR. ADAMS: What hospital is she in.

21 PROSPECTIVE JUROR: I'm trying to think. Cabell,
22 Cabell Huntington.

23 MR. ADAMS: Okay. And the mesh that was implanted
24 into her, do you know which specific part of her body it was
25 implanted in.

—Jury Selection—

1 PROSPECTIVE JUROR: It was in her stomach like right
2 here.

3 MR. ADAMS: It was in the abdomen.

4 PROSPECTIVE JUROR: Abdomen, yes.

5 MR. ADAMS: Okay. Do you know why the mesh was
6 implanted into her body.

7 PROSPECTIVE JUROR: She had a hernia and that's --
8 and they put a mesh in there to repair the hernia.

9 MR. ADAMS: Okay. And she obviously has had a bad or
10 negative result as a result of the mesh being put in her body.
11 Is that correct.

12 PROSPECTIVE JUROR: Yes. They think that maybe her
13 body rejected the mesh.

14 MR. ADAMS: Okay.

15 PROSPECTIVE JUROR: And she had problems after they
16 put it in. Then she finally got really bad and we had to call
17 an ambulance at work and had her sent back to Huntington.

18 MR. ADAMS: Okay. And, and part of the claims in
19 this lawsuit by the plaintiffs are that they had a bad
20 reaction to the mesh. You're aware of that.

21 PROSPECTIVE JUROR: Uh-huh.

22 MR. ADAMS: All right. Now, based upon that
23 experience with your friend who you work with a lot, do you --
24 in your heart of hearts -- and you can only answer this and
25 there's no right or wrong answer. But in your heart of hearts

—Jury Selection—

1 right now based upon your friend's experience, do you believe
2 that you would tend to favor these plaintiffs who are also
3 claiming that they've had problems with mesh.

4 PROSPECTIVE JUROR: I would hope not, but I'm not
5 sure really.

6 MR. ADAMS: So -- and that's totally fine. All we're
7 looking for is honest answers. But right now given that
8 you've got a person close to you who's had a really horrible
9 experience with mesh, it's fair to say that the plaintiffs
10 might be starting off a little bit ahead, at least in your
11 mind. Is that fair.

12 PROSPECTIVE JUROR: Yes, sir, probably.

13 MR. ADAMS: Okay. So, in other words, if the Court
14 was to say, you know, you've got to put this experience out of
15 your life and you have to be fair, in your heart of hearts
16 based upon what you've said, you really would struggle and you
17 couldn't do that. Is that fair.

18 PROSPECTIVE JUROR: Yes, sir.

19 MR. ADAMS: Okay. I don't have any other questions.

20 THE COURT: Do you know with respect to your friend
21 that it is the mesh causing the problem or not?

22 PROSPECTIVE JUROR: Yes, it was the mesh. They're
23 not sure if her body was rejecting it. It got infected really
24 bad. And then they tried to -- like I said, she was in
25 intensive care. She almost died.

—Jury Selection—

1 THE COURT: But what you've said to me, I'm asking
2 you do you know because her body rejected it that that means
3 that there's some problem with the mesh or is there some other
4 medical problem?

5 PROSPECTIVE JUROR: I don't know that yet because
6 it's just happened recently. It's been about a month.

7 THE COURT: Mr. Farrell.

8 MR. FARRELL: Yes. So, coming in here with your
9 experience and your background, you honestly answered the
10 questions that you feel some sympathy, are you able to put
11 aside those personal feelings if the Judge instructs you to
12 base your decision solely on the evidence you hear at trial?

13 PROSPECTIVE JUROR: Are you asking me if I could put
14 my feelings aside and be objective?

15 MR. FARRELL: And follow the rules given by the
16 Judge.

17 PROSPECTIVE JUROR: I would definitely follow the
18 rules.

19 MR. FARRELL: Thank you.

20 THE COURT: Ms. Elkins, out of an abundance of
21 caution because it seems to me perhaps without intending to
22 you've given inconsistent answers to that question -- when Mr.
23 Adams was inquiring of you, you weren't sure and you thought
24 that maybe the plaintiffs would start a little bit ahead. In
25 answer to Mr. Farrell's question you've said you would follow

—Jury Selection—

1 the rules.

2 PROSPECTIVE JUROR: I would try to follow the rules
3 definitely.

4 THE COURT: Out of an abundance of caution, I'm going
5 to release you from any further service in this case. It
6 appears to me from my view that you're struggling with that
7 issue. And I want to make sure that both of these parties get
8 a fair and impartial jury.

9 PROSPECTIVE JUROR: Yes, ma'am.

10 THE COURT: And we appreciate that you've been
11 honest. You've tried your best to answer the lawyers'
12 questions. And I'm going to release you from any further
13 service in this case.

14 PROSPECTIVE JUROR: Thank you.

15 THE COURT: Thank you.

16 (Prospective Juror Betty Elkins was excused.)

17 THE COURT: I'll hear your objections, counsel.

18 MR. FARRELL: I'd like to note an objection for the
19 record that --

20 THE COURT: As to the last answer you got from her?

21 MR. FARRELL: I thought she was pretty fair when she
22 said that she would be able to take her personal experiences
23 and set it aside. That being said, I understand. I just want
24 to point out that if, if we're going to end up striking
25 everybody that's had a bad experience with mesh, I would like

—Jury Selection—

1 to renew my motion to strike the chemical engineer consultant
2 for DuPont in the C-8 litigation.

3 THE COURT: All right.

4 MR. MONSOUR: I'd like to -- the one question I have
5 to ask, Your Honor, is we were kind of talking -- it's almost
6 a little bit about apples and oranges and you picked up on
7 this. We're talking about hernia mesh that goes in the
8 abdomen. It's not placed transvaginally. It's placed in a
9 clean wound. And it sounds like it was an infection that took
10 place, not a mesh-related problem because she said somebody,
11 they just took it out. That means there had to be a lot of
12 ingrowth. So, we're talking about two completely separate
13 situations.

14 THE COURT: And I agree with you. But they don't
15 appear to be separate in the responses that she gave.

16 MR. MONSOUR: That's a fair statement.

17 THE COURT: So, for that reason, I believe that she
18 should be released and I preserve an objection and exception
19 for the plaintiff.

20 MR. FARRELL: So, I'll just point out that able
21 counsel is able to take anybody that has had a bad experience
22 with mesh and ask the honest question of, "In your heart of
23 hearts do you feel sympathetic?" And, obviously, that is an
24 answer that is true or false. But that's not the standard to
25 which we are measuring the competency of the jurors.

—Jury Selection—

1 THE COURT: And I agree with that. But she said in
2 her heart of hearts the plaintiffs would start out a little
3 bit ahead in response to your question. She then gave just
4 the answer that we would want to see from a fair and impartial
5 juror. Because I don't know which way it's going to go, I
6 think we have sufficient people that we shouldn't have to take
7 inconsistent answers.

8 MR. FARRELL: And begging the Court's indulgence, can
9 I ask the C-8 chemical engineer in his heart of hearts whether
10 what --

11 THE COURT: Nice try. Let me have here at the bench,
12 please, Ms. Ferris, Ms. Cathy Ferris.

13 (Prospective Juror Cathy Ferris approached the
14 bench.)

15 THE COURT: Good morning.

16 PROSPECTIVE JUROR: Good morning.

17 THE COURT: Ms. Ferris, I have reviewed your
18 questionnaire that you submitted and you indicated, first of
19 all, you've seen some lawyer adds regarding this device. Is
20 that correct?

21 PROSPECTIVE JUROR: Yes.

22 THE COURT: Tell me what you recall about that.

23 PROSPECTIVE JUROR: Just giving the name of the
24 company or the firm, and then if you have any questions or
25 want to file a lawsuit you call them. It's just the

—Jury Selection—

1 advertisements.

2 THE COURT: And then I will note that at some point
3 you looked up the court calendar and you saw Boston
4 Scientific's name --

5 PROSPECTIVE JUROR: Yes.

6 THE COURT: -- and searched for that on the web. Is
7 that correct?

8 PROSPECTIVE JUROR: Just did a quick Google search.
9 And when I saw that it was in regards to the mesh sling, I
10 stopped there because that told me all I wanted to know.

11 THE COURT: All right. What exactly were you looking
12 for when you say, "It told me all I wanted to know"?

13 PROSPECTIVE JUROR: The topic.

14 THE COURT: Okay. You have heard my very brief
15 summary of what this case is about.

16 PROSPECTIVE JUROR: Uh-huh.

17 THE COURT: Is there anything that you saw in those
18 ads or in your Google search that causes you to, without
19 hearing evidence, know how this case should be resolved?

20 PROSPECTIVE JUROR: No, I really don't.

21 THE COURT: Do you have any leanings towards Boston
22 Scientific or against Boston Scientific as a result of your
23 Google search?

24 PROSPECTIVE JUROR: No.

25 THE COURT: What about with respect to the

—Jury Selection—

1 plaintiffs? Is there anything that you know from looking at
2 the ad or that Google search that would cause you to lean
3 either in favor of or against these plaintiffs?

4 PROSPECTIVE JUROR: No, because I don't know enough
5 about the product and I don't know enough about what their
6 concerns are.

7 THE COURT: All right. Tell me, is there any
8 knowledge that you have whatsoever about a vaginal sling or
9 about Boston Scientific that you would bring with you into
10 your consideration in this case?

11 PROSPECTIVE JUROR: The only thing I know is what I
12 put in the questionnaire about my colleague. And that was a
13 long time ago. It wasn't a vaginal sling. It was abdominal,
14 replacing the muscles. That's all I know. I know her
15 recovery was long. I don't know if she had any difficulty
16 with it because she left the organization.

17 THE COURT: I am going to instruct you ladies and
18 gentlemen of the jury that you can base your verdict only on
19 the evidence you hear in this courtroom and the Court's
20 instructions. Do I have your assurance that you can do that?

21 PROSPECTIVE JUROR: Yes, ma'am.

22 THE COURT: All right. Anything nagging at you that
23 tells you you can't be a fair and impartial juror in this
24 case, Ms. Ferris?

25 PROSPECTIVE JUROR: No, ma'am.

—Jury Selection—

1 THE COURT: Counsel, any questions you all have?

2 MR. FARRELL: No questions.

3 MR. ADAMS: No questions.

4 THE COURT: All right. Thank you so much.

5 (Prospective Juror Cathy Ferris returned to the jury
6 box.)

7 THE COURT: Mr. Ralph Harvey, if you would join us
8 here, please, at the bench.

9 (Prospective Juror Ralph Harvey approached the
10 bench.)

11 THE COURT: Good morning, sir.

12 PROSPECTIVE JUROR: Good morning.

13 THE COURT: I have reviewed your jury questionnaire
14 that you answered for us. And as I understand it, your
15 mother-in-law had some vaginal surgery. Is that correct?

16 PROSPECTIVE JUROR: Correct.

17 THE COURT: What do you know about that?

18 PROSPECTIVE JUROR: Well, I know that she had it and
19 it failed and had it again and it was -- she had feces coming
20 out of her vagina.

21 THE COURT: All right. Do you know anything about
22 the nature of the surgery, the type of surgery or anything
23 that was done during the course of the surgery?

24 PROSPECTIVE JUROR: I'm not really sure at this -- I
25 think it had something to do with like something was dropped,

—Jury Selection—

1 you know. That was the term. It's been several years ago.

2 THE COURT: Okay.

3 PROSPECTIVE JUROR: But she -- it failed and then she
4 had to go back and have it done again.

5 THE COURT: Okay. The plaintiffs in this case allege
6 that they each had surgeries. And inasmuch as you don't know
7 the nature of your mother-in-law's surgery, is there anything
8 about that that would cause you to be unable to sit fairly and
9 impartially as a juror in this case?

10 PROSPECTIVE JUROR: I don't think so. I can give --
11 give me the facts and --

12 THE COURT: When you say that, are you saying that
13 you would base your verdict on the facts of this case?

14 PROSPECTIVE JUROR: Yeah. If it's the same thing,
15 they have nothing to do with my mother-in-law. But just --
16 I'm sure it wasn't because it's been several years ago.

17 THE COURT: And you -- as I understand it, you
18 correct me if I'm wrong, you don't know anything about the
19 nature of your mother-in-law's surgery?

20 PROSPECTIVE JUROR: No. But I do -- just -- like I
21 said, about the -- she was having feces come out of her
22 vagina.

23 THE COURT: But the surgery itself you don't know
24 anything about?

25 PROSPECTIVE JUROR: No, I don't remember. It's been

—Jury Selection—

1 too long.

2 THE COURT: All right. She also had a pacemaker?

3 PROSPECTIVE JUROR: She has a pacemaker, yes.

4 THE COURT: All right. And --

5 PROSPECTIVE JUROR: But it was after, several years
6 after this before she had the pacemaker.

7 THE COURT: Okay. Knowing that and knowing about her
8 vaginal surgery, is there anything nagging at you that would
9 prevent you from sitting as a fair and impartial juror for all
10 of the parties in this case?

11 PROSPECTIVE JUROR: No, I don't think so.

12 THE COURT: All right. Now, let me ask you this.
13 Again, I'm going to instruct you jurors that you can base your
14 verdict only on the evidence and the law in this courtroom,
15 the evidence that you hear --

16 PROSPECTIVE JUROR: Correct.

17 THE COURT: -- and the law. Is there anything about
18 your mother-in-law's surgery that you're going to bring with
19 you in considering this case?

20 PROSPECTIVE JUROR: It's going to be in the back of
21 my mind that she had some problem, you know, but I don't, I
22 don't think -- whatever the facts are, I think I could render
23 my decision based on what's going to happen here.

24 THE COURT: All right. And when you say it's always
25 going to be in the back of your mind, you're telling me you're

—Jury Selection—

1 not going to, but are you also telling me that it's not going
2 to impact your decision in this case?

3 PROSPECTIVE JUROR: Correct.

4 THE COURT: Counsel.

5 MR. FARRELL: Approximately what year was your
6 mother-in-law's surgery?

7 PROSPECTIVE JUROR: I'm going to say it's been at
8 least 10 years.

9 MR. FARRELL: Okay. And pardon my asking. Your
10 mother-in-law, she, is she still alive?

11 PROSPECTIVE JUROR: Yes. She is 89, be 90 next
12 month.

13 MR. FARRELL: And you're partial to her?

14 PROSPECTIVE JUROR: I am.

15 MR. FARRELL: Okay. So, even though that your
16 mother-in-law has had potentially a bad experience with some
17 type of pelvic surgery, are you able to put aside your
18 personal feelings and listen to the instructions by the Judge
19 and follow the law and base your decision solely on the facts
20 presented here in this courtroom?

21 PROSPECTIVE JUROR: I am. I definitely am.

22 MR. FARRELL: No questions.

23 MR. ADAMS: I think you said that your mother-in-law
24 had two pelvic surgeries.

25 PROSPECTIVE JUROR: She had one and it failed.

—Jury Selection—

1 Something happened. The screen or whatever it was called
2 failed. And she had to go back and have it, something else
3 done again to repair that.

4 MR. ADAMS: Okay. In the first surgery, was mesh
5 used in the first surgery.

6 PROSPECTIVE JUROR: Yes, it was.

7 MR. ADAMS: And in the second surgery was it a repair
8 due to a problem with the mesh or was it --

9 PROSPECTIVE JUROR: It was.

10 MR. ADAMS: And where was that surgery done.

11 PROSPECTIVE JUROR: I'm going to say Thomas Memorial
12 Hospital.

13 MR. ADAMS: And do you know the doctors who were
14 involved in that.

15 PROSPECTIVE JUROR: No, sir, I do not. I just don't
16 remember.

17 MR. ADAMS: Okay. And when these surgeries were
18 going on, were you going to visit your mother-in-law in the
19 hospital.

20 PROSPECTIVE JUROR: I'm sure I was. I mean, --

21 MR. ADAMS: Do you recall her suffering and being in
22 pain as a result of these procedures.

23 PROSPECTIVE JUROR: She had some pain, definitely.

24 MR. ADAMS: And within your family is it fair to say
25 that the belief is that the reason why your mother-in-law

—Jury Selection—

1 suffered was some problem due to the mesh.

2 THE COURT: I'm more concerned about his beliefs,
3 counsel.

4 MR. ADAMS: Okay. What about you? I think you
5 indicated that you believe that the problem that your mother
6 had was related to the actual mesh being in her body. Is that
7 fair.

8 PROSPECTIVE JUROR: I think that's fair, yeah.

9 MR. ADAMS: Now, that same issue is going to be at
10 stake in this case.

11 PROSPECTIVE JUROR: Uh-huh.

12 MR. ADAMS: Both sides are just looking for fair
13 jurors. Now, it's kind of like asking whether you like ice
14 cream. Do you like chocolate or vanilla? There's no right or
15 wrong answer. There's only an answer that you could give us.

16 Given the fact that you have family and your
17 mother-in-law who you care about has been through this
18 experience and you believe the problem was the mesh, already
19 would you tend to believe that these plaintiffs' issues with
20 the mesh is more likely true than not true? Only you can
21 answer that, sir.

22 PROSPECTIVE JUROR: I would say, yes, that's probably
23 true, probably has something to do with the mesh.

24 MR. ADAMS: And I appreciate that because we all have
25 different experiences that we -- frankly, we can't put them

—Jury Selection—

1 out of our mind. So, already you would tend to favor the
2 plaintiffs in this case? Is that fair.

3 PROSPECTIVE JUROR: Yeah, you're probably right.

4 MR. ADAMS: Okay. And given that belief, do you
5 believe it would probably -- would you probably be better
6 suited to be a juror on another case that did not involve
7 mesh? Is that fair.

8 PROSPECTIVE JUROR: I think that's very fair.

9 MR. ADAMS: Okay.

10 PROSPECTIVE JUROR: Yeah.

11 MR. ADAMS: Okay. And, so, when we're looking for a
12 fair jury, a fair jury and fair jurors, you would believe that
13 you would be better suited to be on a different case besides
14 this because of your experiences? Is that fair.

15 PROSPECTIVE JUROR: I think that's very fair, yeah.

16 MR. ADAMS: All right.

17 PROSPECTIVE JUROR: Sounds fair to me for sure that,
18 you know, like I said, it's always going to be there.

19 MR. ADAMS: Right. So, even if the Court were to
20 give you an instruction, that would be there and you would
21 have doubts as to whether you really could be fair and
22 impartial. Correct.

23 PROSPECTIVE JUROR: Correct.

24 MR. ADAMS: Okay.

25 THE COURT: Mr. Farrell.

—Jury Selection—

1 MR. FARRELL: If -- just to repeat your answer from
2 before, or question from before, if the Judge asks you,
3 instructs you --

4 PROSPECTIVE JUROR: Correct.

5 MR. FARRELL: -- to set aside your personal
6 experiences and your personal feelings walking into the
7 courtroom, are you able to set aside those personal feelings
8 and follow the law and make a decision based on the facts of
9 this case?

10 PROSPECTIVE JUROR: Yes, I could. I could.

11 MR. FARRELL: And, and do you know the product that
12 was used in your mother-in-law's case?

13 PROSPECTIVE JUROR: I do not.

14 MR. FARRELL: Okay. And would you hold it against
15 Boston Scientific if it's a completely different procedure and
16 a different product? Would your mother-in-law's experience
17 impact your decision-making ability in this case?

18 PROSPECTIVE JUROR: No, it would not.

19 MR. FARRELL: Okay. No further questions.

20 THE COURT: Perhaps I didn't understand you. I
21 thought when I questioned you you said you didn't really know
22 the nature of your mother-in-law's surgery. Is that accurate
23 or not?

24 PROSPECTIVE JUROR: Well, I know it was with,
25 something to do with something was wrong with her female

—Jury Selection—

1 organs. That was the term that I remember. It had dropped.

2 THE COURT: But as to what the doctors did or what
3 the nature of the surgery was --

4 PROSPECTIVE JUROR: They put mesh in to correct it.

5 THE COURT: Okay. Now, --

6 PROSPECTIVE JUROR: Then it failed and they did --

7 THE COURT: You have listened to the questions very
8 carefully that these lawyers have asked you.

9 PROSPECTIVE JUROR: Uh-huh.

10 THE COURT: Did I understand you correctly to tell
11 the lawyers that -- well, you first said you thought you could
12 sit fairly and impartially and follow the instructions. At
13 the same time, you have told the lawyers that the plaintiffs
14 may be at an advantage with you based on what happened to your
15 mother-in-law. Am I correct or not?

16 PROSPECTIVE JUROR: I think when I said it's always
17 going to be there that it happened to her, you know. I'm sure
18 that if you instruct, what you instruct me, this is the law, I
19 will follow that. Whatever you instruct me, I think I could
20 do that for sure.

21 THE COURT: All right. Let me say this to you and
22 you give me a final answer.

23 PROSPECTIVE JUROR: Okay.

24 THE COURT: And I'm going to hold you to it. When
25 you listen to the evidence in this courtroom that these women

—Jury Selection—

1 had vaginal mesh implants, that they had surgery, and these
2 are just allegations, they're going to claim that they had
3 complications as a result. The defendant says that's nothing
4 to do with their product. They deny that.

5 Are you going to be able to leave what happened to
6 your mother-in-law out of any deliberations that you do and a
7 verdict in this case and base it just on what you hear in the
8 courtroom? And, again, there's no right or wrong answer. If
9 you can, that's fine. If you can't, that's fine. I simply
10 want to make sure that all of these parties have a fair jury.

11 PROSPECTIVE JUROR: I think it's best for me not to
12 be on the jury.

13 THE COURT: That is your final answer and I'm going
14 to accept it. All right. Thank you. Mr. Harvey, we
15 appreciate your being honest. That's so very important.
16 Thank you. I'm going to release you from any further service
17 in this case.

18 PROSPECTIVE JUROR: Thank you.

19 (Prospective Juror Ralph Harvey excused)

20 THE COURT: Mr. Farrell, objections you want to place
21 on the record?

22 MR. FARRELL: Just note my objection for the record.

23 THE COURT: Thank you. I think we have maybe four
24 more to go based on my list.

25 (Bench conference concluded)

—Jury Selection—

1 THE COURT: Ladies and gentlemen, I am going to give
2 you all a brief recess. While you're out, do not discuss this
3 case among yourselves or permit anyone to discuss it with you
4 or in your presence.

5 For you ladies and gentlemen of the jury, please look
6 around and take your exact same seats that you're now sitting
7 in if you leave the courtroom, please.

8 We will return to the courtroom at 25 minutes till
9 the hour. We'll stand in recess.

10 (A recess was taken from 11:20 a.m. to 11:35 a.m.)

11 COURT SERVICES OFFICER: All rise.

12 THE COURT: All right, counsel. I will have you here
13 at the bench, please.

14 (The following occurred at sidebar.)

15 THE COURT: Could I have Julian Martin, please, here
16 at the bench.

17 (The prospective juror approached sidebar.)

18 THE COURT: Hi. How are you?

19 PROSPECTIVE JUROR: I'm three-quarters.

20 THE COURT: I brought you to the bench, Mr. Martin,
21 in my review of your jury questionnaire, I think you indicated
22 that your wife had had bladder prolapse surgery; is that
23 right?

24 PROSPECTIVE JUROR: Uh-huh.

25 THE COURT: How long ago was that?

—Jury Selection—

1 PROSPECTIVE JUROR: How long ago was that?

2 THE COURT: You can just give me an approximation.

3 PROSPECTIVE JUROR: That was about five or six years
4 ago.

5 THE COURT: Okay. You have heard my very brief
6 summary about the nature of this case.

7 PROSPECTIVE JUROR: Um-hum.

8 THE COURT: These plaintiffs allege that they had
9 surgery as a result of -- or that they had a vaginal sling,
10 mesh sling, implanted and that they claim that it resulted in
11 complications. The defendant denies any wrongdoing in that.
12 Is there anything about your wife's bladder prolapse surgery
13 that would cause you to be unable to sit fairly and
14 impartially in this case?

15 PROSPECTIVE JUROR: No, I don't think so. Excuse me.

16 THE COURT: I am going to instruct you that your
17 verdict must be based solely upon the evidence that you hear
18 in this courtroom and the instructions on the law that I give
19 to you. Do I have your assurance that that is all your
20 verdict will be based upon?

21 PROSPECTIVE JUROR: Yes.

22 THE COURT: All right. In other words, nothing about
23 your wife's surgery would enter into your deliberations in
24 this case?

25 PROSPECTIVE JUROR: No, the surgery was successful

—Jury Selection—

1 and -- and it didn't involve any kind of mesh or anything.

2 THE COURT: Okay. Counsel, any questions of this
3 gentleman?

4 MR. FARRELL: One second, Your Honor.

5 Hi. I've got a couple questions for you.

6 PROSPECTIVE JUROR: Sure.

7 MR. FARRELL: Number one, I've been dying to ask you
8 since I've seen your name on the card. What subject and what
9 school did you teach at?

10 PROSPECTIVE JUROR: I taught chemistry and physics at
11 Duval High School in Lincoln County.

12 MR. FARRELL: Yes, sir. I went to Huntington East.

13 PROSPECTIVE JUROR: Oh, did you? Well, we beat you
14 guys when I was in high school --

15 MR. FARRELL: I hope you -- never mind.

16 PROSPECTIVE JUROR: -- in football.

17 MR. FARRELL: I have a couple questions for you.
18 Your wife's experience with this surgery, it was a good one?

19 PROSPECTIVE JUROR: Yes. Well, I mean, it was --
20 it's been okay. I mean, it's been four, five -- what did I
21 say? Five or six years, and she hasn't had any complications.

22 MR. FARRELL: Okay. So the women that are in this
23 case are women that have had a pelvic surgery and they allege
24 they did not have such a great outcome. The fact that your
25 wife had a good outcome and these women didn't, this case

—Jury Selection—

1 involves an allegation that the product used in these types of
2 surgeries is not reasonably safe across the board. Is the
3 fact that your wife had a positive experience -- does that
4 maybe tend for you to believe in the safety of this product a
5 little bit more than not?

6 PROSPECTIVE JUROR: Well, I don't think she had the
7 product. I mean, in her surgery, it wasn't part of her
8 surgery. So, no, the answer is no.

9 MR. FARRELL: Thank you. No further questions.

10 MR. ADAMS: I'm Rob Adams. I represent Boston
11 Scientific. And I think on your questionnaire, you had
12 indicated that you are familiar with devices that are inserted
13 to hold the bladder up.

14 PROSPECTIVE JUROR: I've heard of them, yeah. Yeah.
15 It's called a mesh, I think?

16 MR. ADAMS: Yeah. And was mesh an option considered
17 at all for your wife's surgery?

18 PROSPECTIVE JUROR: I don't know, except he said he
19 wasn't going to use a mesh.

20 MR. ADAMS: Okay. And who was the doctor who
21 performed the surgery?

22 PROSPECTIVE JUROR: Oh, here we go. If I had a phone
23 book, I could look his name up.

24 MR. ADAMS: Okay, okay. Maybe you don't remember
25 the doctor.

—Jury Selection—

1 PROSPECTIVE JUROR: He is local, in Charleston.

2 MR. ADAMS: Okay.

3 PROSPECTIVE JUROR: He's a gynecologist.

4 MR. ADAMS: Okay. And --

5 PROSPECTIVE JUROR: I'll think of it tomorrow.

6 MR. ADAMS: Do you have, you know, as a result --
7 you said that he did not put in mesh but you knew about mesh.

8 PROSPECTIVE JUROR: Yeah, I knew about it.

9 MR. ADAMS: Okay. Do you know any information as to
10 why the doctor decided not to use mesh in that case? Or did
11 he provide you any information one way or another about it?

12 PROSPECTIVE JUROR: I don't -- I don't recall.
13 Somewhere I had -- must have seen a headline or something
14 somewhere about it --

15 MR. ADAMS: Um-hum.

16 PROSPECTIVE JUROR: -- about the use of the mesh.

17 MR. ADAMS: Um-hum.

18 PROSPECTIVE JUROR: But it's very vague in my mind.

19 MR. ADAMS: Okay. Do you know about the use of mesh
20 in other parts of of the body like hernia repair?

21 PROSPECTIVE JUROR: Yeah. My son's a surgeon.

22 MR. ADAMS: Okay.

23 PROSPECTIVE JUROR: And he -- he does does rupture --
24 they use mesh in that sometimes.

25 MR. ADAMS: What type of surgeon is your son?

—Jury Selection—

1 PROSPECTIVE JUROR: General surgeon.

2 MR. ADAMS: Okay. So he doesn't do any of the types
3 of surgeries that -- female surgeries, right?

4 PROSPECTIVE JUROR: No, uh-uh.

5 MR. ADAMS: Okay. And where is your son located?

6 PROSPECTIVE JUROR: Here, in Saint Francis Hospital.

7 MR. ADAMS: Okay. And what is your son's name?

8 PROSPECTIVE JUROR: Luke Martin.

9 MR. ADAMS: Dr. Luke Martin. Okay.

10 So, again, you don't have any feelings that are
11 positive or negative regarding mesh; is that fair?

12 PROSPECTIVE JUROR: No, I don't have any feelings one
13 way or the other.

14 MR. ADAMS: Okay.

15 PROSPECTIVE JUROR: No.

16 MR. ADAMS: I don't have any other questions for you
17 at this time.

18 THE COURT: Thank you, sir. You can have a seat.

19 MR. FARRELL: Judge --

20 THE COURT: I'm sorry?

21 MR. FARRELL: I would like the record to reflect
22 that when I was in high school, Huntington East beat Duval in
23 the State Debate Championship.

24 THE COURT: My experience is that you men always
25 remember that you won.

—Jury Selection—

1 (Laughter.)

2 (Sidebar concluded.)

3 THE COURT: Can I have Ms. Shears here, please?

4 (The prospective juror approached sidebar.)

5 THE COURT: Hi. Come on in. Good morning to you,
6 Ms. Shears. I have reviewed your jury questionnaire, and it
7 indicates that your mother had some bladder surgery; is that
8 right?

9 PROSPECTIVE JUROR: Yes.

10 THE COURT: Tell me what you know about that.

11 PROSPECTIVE JUROR: That's all I know. She couldn't
12 remember anything. HER memory is not so great. I know she
13 had a surgeon do the surgery in Parkersburg, and then she had
14 a surgery after that and she couldn't remember.

15 THE COURT: Okay. Do you know what the nature of
16 that surgery was?

17 PROSPECTIVE JUROR: It was for her bladder, that's
18 all I know.

19 THE COURT: You don't know what they did to her
20 bladder?

21 PROSPECTIVE JUROR: She told me they tacked it up.

22 THE COURT: Okay. You don't know whether any device
23 of any type was used?

24 PROSPECTIVE JUROR: She couldn't -- she didn't
25 remember if any devices were -- no.

—Jury Selection—

1 THE COURT: Okay. You heard me talk about the nature
2 of this surgery --

3 PROSPECTIVE JUROR: Yes.

4 THE COURT: -- or the nature of this case.

5 PROSPECTIVE JUROR: Um-hum.

6 THE COURT: The plaintiffs in this case will claim
7 that they had a device implanted, a vaginal mesh device --

8 PROSPECTIVE JUROR: Right.

9 THE COURT: -- and that it resulted in complications.
10 The defendant denies that that is due to any wrongdoing on
11 their part.

12 Is there anything about what you know about your
13 mother that would cause you to be unable to sit fairly and
14 impartially as a juror in this case?

15 PROSPECTIVE JUROR: I don't believe so, no.

16 THE COURT: I'm going to instruct you all that any
17 verdict must be based solely on the evidence you hear in this
18 courtroom and the instructions of law that I give to you. Do
19 I have your assurance that you can follow that?

20 PROSPECTIVE JUROR: Yes, ma'am.

21 THE COURT: Would you, in your mind, classify your
22 mother's outcome as positive or negative?

23 PROSPECTIVE JUROR: According to her, negative.

24 THE COURT: Okay. And how long ago was that?

25 PROSPECTIVE JUROR: It's been more than ten years,

Jury Selection

1 I'd say.

2 THE COURT: All right. Counsel, any questions?

3 MR. FARRELL: Yes, I have a couple follow-up.

4 Do you know what type of surgery or what device was
5 used or anything?

6 PROSPECTIVE JUROR: I don't know if any devices were
7 used. I'm not sure. I just know the surgeon's name.

8 MR. FARRELL: Do you know the route of the surgery
9 or the purpose or diagnosis or --

10 PROSPECTIVE JUROR: It was for bladder problems.
11 That's all I know.

12 MR. FARRELL: Okay. You said it was approximately
13 ten years ago.

14 PROSPECTIVE JUROR: At least ten. Um-hum.

15 MR. FARRELL: And I know from your jury
16 questionnaire that you are a Magistrate's Assistant in Wirt
17 County.

18 PROSPECTIVE JUROR: Correct. Um-hum.

19 MR. FARRELL: And you have some background with some
20 law firm as well?

21 PROSPECTIVE JUROR: Correct.

22 MR. FARRELL: Have you worked on plaintiff and
23 defense cases?

24 PROSPECTIVE JUROR: Yes.

25 MR. FARRELL: Have you -- the lawyers that you've

—Jury Selection—

1 worked for have been lawyers that have filed lawsuits?

2 PROSPECTIVE JUROR: Correct.

3 MR. FARRELL: As well as defend lawsuits?

4 PROSPECTIVE JUROR: Yes.

5 MR. FARRELL: Have you ever worked on a product
6 liability case?

7 PROSPECTIVE JUROR: No.

8 MR. FARRELL: Have you in your capacity ever been
9 involved in personal injury lawsuits?

10 PROSPECTIVE JUROR: Yes.

11 MR. FARRELL: On the plaintiff or defense side?

12 PROSPECTIVE JUROR: Plaintiff.

13 MR. FARRELL: On the plaintiff?

14 PROSPECTIVE JUROR: Um-hum.

15 MR. FARRELL: Okay. Thank you. No more questions.

16 THE COURT: Mr. Adams?

17 MR. ADAMS: I'm Rob Adams. I represent Boston
18 Scientific. Just have a couple of questions for you.

19 When you talk about your mother's surgery as being
20 unsuccessful, what type of problems has she had as a result of
21 that?

22 PROSPECTIVE JUROR: I guess just bladder leakage, I
23 guess you would say.

24 MR. ADAMS: Okay. And did you say you know the name
25 of the surgeon?

—Jury Selection—

1 PROSPECTIVE JUROR: Yes.

2 MR. ADAMS: And what is his --

3 PROSPECTIVE JUROR: Thomas Durnell.

4 MR. ADAMS: Thomas, is it --

5 PROSPECTIVE JUROR: D-U-R-N-E-L-L.

6 MR. ADAMS: And what hospital was that?

7 PROSPECTIVE JUROR: Camden Clark in Parkersburg.

8 MS. WEILER: Say that again.

9 PROSPECTIVE JUROR: Camden Clark in Parkersburg.

10 MR. ADAMS: And so she has ongoing incontinence
11 problems?

12 PROSPECTIVE JUROR: Correct.

13 MR. ADAMS: And do you know what she does to deal
14 with the incontinence problems?

15 PROSPECTIVE JUROR: I don't know.

16 MR. ADAMS: Okay. And, again, I apologize if this is
17 repetitive. Is it fair to say that you don't even know
18 whether mesh was used in that procedure?

19 PROSPECTIVE JUROR: That's correct, I have no idea.

20 MR. ADAMS: Okay. Before coming into this courtroom,
21 had you ever heard of mesh using -- mesh being used in female
22 pelvic surgeries?

23 PROSPECTIVE JUROR: Yes.

24 MR. ADAMS: How did you know that?

25 PROSPECTIVE JUROR: I mean, I've just seen it on the

Jury Selection

1 news.

2 MR. ADAMS: Just in the --

3 PROSPECTIVE JUROR: Yes.

4 MR. ADAMS: -- the advertisements?

5 PROSPECTIVE JUROR: Correct.

6 MR. ADAMS: Have you read any other information or
7 heard any other things on that?

8 PROSPECTIVE JUROR: No, sir.

9 MR. ADAMS: Okay. And -- tell me what you do in your
10 capacity as a Magistrate Assistant for the Court.

11 PROSPECTIVE JUROR: It's basically civil suits and
12 criminal suits, start in Magistrate court. Um-hum.

13 MR. ADAMS: Okay. Now, do you know Ms. Tyree at all?

14 PROSPECTIVE JUROR: No.

15 MR. ADAMS: Have you ever heard of her?

16 PROSPECTIVE JUROR: No.

17 MR. ADAMS: She had a job in a similar capacity.

18 PROSPECTIVE JUROR: No.

19 MR. ADAMS: Okay. Dr. Durnell, have you had any
20 dealings with him since that surgery? Do you know anything
21 about him?

22 PROSPECTIVE JUROR: He's my physician as well.

23 MR. ADAMS: Okay. So you currently go to see him?

24 PROSPECTIVE JUROR: Yes.

25 MR. ADAMS: And as far as the -- you said that your

—Jury Selection—

1 mother had the bladder tacked up.

2 PROSPECTIVE JUROR: Um-hum.

3 MR. ADAMS: Other than that phrase, having it tacked
4 up, do you know, specifically, what he did to tack it up?

5 PROSPECTIVE JUROR: I have no idea.

6 MR. ADAMS: Okay.

7 PROSPECTIVE JUROR: Sorry.

8 MR. ADAMS: Is it fair to say you can be fair and
9 impartial?

10 PROSPECTIVE JUROR: That's correct.

11 MR. ADAMS: All right. Thank you.

12 THE COURT: Anything further, Mr. Farrell?

13 MR. FARRELL: (Shakes head.)

14 THE COURT: Thank you very much.

15 (The prospective juror left sidebar.)

16 THE COURT: Anything with respect to that juror,
17 counsel?

18 MR. FARRELL: Nothing from the plaintiff.

19 THE COURT: Mr. Adams?

20 MR. ADAMS: No, Your Honor. Thank you.

21 (Sidebar concluded.)

22 THE COURT: Ms. Wetherholt.

23 (The following occurred at sidebar.)

24 THE COURT: This is the last one, counsel.

25 (The prospective juror approached sidebar.)

—Jury Selection—

1 PROSPECTIVE JUROR: Good morning.

2 THE COURT: I reviewed your juror questionnaire.

3 PROSPECTIVE JUROR: Um-hum.

4 THE COURT: And you've indicated that you have some
5 knowledge of vaginal slings by virtue of your employment; is
6 that correct?

7 PROSPECTIVE JUROR: Just what they are, not a lot
8 more than that. I work in a medical office, I do clerical
9 work, but it's a vascular office so I'm not familiar with the
10 other things.

11 THE COURT: You know the term but you don't know
12 anything else about it; is that fair or not?

13 PROSPECTIVE JUROR: Yeah, that's pretty fair.

14 THE COURT: What's the extent of your knowledge about
15 it?

16 PROSPECTIVE JUROR: I know that it's something that
17 is put inside the body to help hold up the bladder or the
18 uterus. That's about all I know.

19 THE COURT: All right. Have you seen any
20 advertisements about vaginal mesh slings?

21 PROSPECTIVE JUROR: I've seen a couple of ads, yeah,
22 on the television.

23 THE COURT: On television?

24 PROSPECTIVE JUROR: Um-hum.

25 THE COURT: Any other knowledge of them other than

—Jury Selection—

1 from your employment and having seen the advertisements?

2 PROSPECTIVE JUROR: No.

3 THE COURT: Anything about what you've seen in those
4 advertisements that would preclude you from being able to sit
5 fairly and impartially for all of the parties in this case?

6 PROSPECTIVE JUROR: No, I don't think so.

7 THE COURT: I'm going to instruct you,
8 Ms. Wetherholt, that any verdict must be based solely upon the
9 evidence that you hear in this courtroom and the instructions
10 of law that I give. Do I have your assurance that you can
11 follow them?

12 PROSPECTIVE JUROR: Yes, ma'am.

13 THE COURT: Is there anything that you saw in the
14 advertisements that, as you stand here right now, tell you how
15 this case should be resolved?

16 PROSPECTIVE JUROR: No. To be honest with you, I
17 just vaguely remember the advertisements. I don't remember a
18 lot about them. I don't watch a lot of TV or pay a lot of
19 attention to those things.

20 THE COURT: Okay. Counsel, any questions?

21 MR. FARRELL: One follow-up.

22 Your job description in your questionnaire, there was
23 another juror that had a similar job description. Do you know
24 anybody on this panel?

25 PROSPECTIVE JUROR: No, I don't.

—Jury Selection—

1 MR. FARRELL: Okay. Thank you.

2 PROSPECTIVE JUROR: I have -- no, no, I don't.

3 MR. FARRELL: Okay, thanks.

4 MR. ADAMS: Okay. Just a couple of questions.
5 I represent Boston Scientific.

6 PROSPECTIVE JUROR: Um-hum.

7 MR. ADAMS: Tell us what you do on a daily basis in
8 the office.

9 PROSPECTIVE JUROR: On a daily basis, I answer the
10 patients' phone calls when they call in, take messages, give
11 them to the nurses. I register patients when they come in. I
12 schedule their follow-up appointments.

13 MR. ADAMS: Okay. And you said you work in a
14 vascular office.

15 PROSPECTIVE JUROR: Yes.

16 MR. ADAMS: What type of procedures do they do?

17 PROSPECTIVE JUROR: They do aneurysm stenting, open
18 aneurysm repairs, they do carotid endarterectomies, carotid
19 stenting, ablations in varicose veins and veinous-type
20 procedures.

21 MR. ADAMS: Okay. And so the doctors who work in
22 your -- in the same office, they are vascular surgeons; is
23 that right?

24 PROSPECTIVE JUROR: Yes.

25 MR. ADAMS: Okay. And you had indicated that your

Jury Selection

1 mom had hip replacement. Was there any --

2 PROSPECTIVE JUROR: Oh, gosh. I did. I'm sorry.

3 MR. ADAMS: That's okay.

4 PROSPECTIVE JUROR: It's been many, many years ago
5 and --

6 THE COURT: There is nothing to apologize about. We
7 have not asked you about that.

8 MR. ADAMS: No, we haven't.

9 THE COURT: Go ahead.

10 MR. ADAMS: That's okay.

11 PROSPECTIVE JUROR: No, she has had no problems. She
12 does good with it.

13 MR. ADAMS: So she actually had a medical device
14 implanted in the body.

15 PROSPECTIVE JUROR: Yes, she did.

16 MR. ADAMS: And it's worked fine?

17 PROSPECTIVE JUROR: Yes.

18 MR. ADAMS: And your mom has also had a hysterectomy
19 that was successful?

20 PROSPECTIVE JUROR: Yes, she has.

21 MR. ADAMS: Has she had any type of ongoing problems,
22 incontinence or anything like that?

23 PROSPECTIVE JUROR: No. Not that I know of.

24 MR. ADAMS: The Court asked you some questions about
25 all the advertisements and you said you've seen some of them;

—Jury Selection—

1 is that right?

2 PROSPECTIVE JUROR: Um-hum. Yes.

3 MR. ADAMS: The fact that you have seen the
4 advertisements, does that cause you to believe that maybe
5 there is some kind of validity to the claims being made here
6 today?

7 PROSPECTIVE JUROR: No, not necessarily. I mean, I
8 would have to hear everything.

9 MR. ADAMS: Hear the evidence?

10 PROSPECTIVE JUROR: Yes, sir.

11 MR. ADAMS: You'd be fair and impartial and listen to
12 all the evidence presented in this courtroom?

13 PROSPECTIVE JUROR: Yes, sir.

14 MR. ADAMS: Before coming into this courtroom, other
15 than seeing ads about vaginal mesh, had you had any other
16 information about mesh?

17 PROSPECTIVE JUROR: No, I have not.

18 MR. ADAMS: Okay. And then tell us, I know that you
19 grew up here locally; is that correct?

20 PROSPECTIVE JUROR: Yeah, about 25, 30 miles away.

21 MR. ADAMS: Okay. And what's your educational
22 background? There was no --

23 PROSPECTIVE JUROR: High school.

24 MR. ADAMS: Okay. What high school did you go to?

25 PROSPECTIVE JUROR: Walton.

—Jury Selection—

1 MR. ADAMS: Okay.

2 PROSPECTIVE JUROR: I don't think it exists anymore.

3 MR. ADAMS: And where was that located?

4 PROSPECTIVE JUROR: Roane County.

5 MR. ADAMS: Okay. Those are all the questions I
6 have. Thank you.

7 THE COURT: Thank you, ma'am.

8 (The prospective juror left sidebar.)

9 THE COURT: That's the end of the list of folks who
10 answered anything relative to the product or procedure. Are
11 there any challenges for cause that I haven't used myself?

12 MR. FARRELL: Not that haven't -- no, Your Honor.

13 MR. ADAMS: (Shakes head.)

14 THE COURT: Thank you all.

15 MR. ADAMS: Thank you.

16 (Sidebar concluded.)

17 THE COURT: Ladies and gentlemen, I will direct these
18 questions to the full panel. There are a number of you who
19 have seen commercials on television or advertisements
20 regarding the device that's involved in this case. Is there
21 anyone who, having seen a commercial from a legal ad, who
22 cannot sit fairly and impartially in this case for all of the
23 parties? Please raise your hand.

24 (No response.)

25 THE COURT: In other words, let me ask you this

—Jury Selection—

1 question specifically: How many of you have seen an ad from a
2 law firm or otherwise regarding a pelvic mesh sling?

3 (Hands raised.)

4 THE COURT: All right. And so my question goes to,
5 specifically, those of you who have raised your hand, is there
6 anything about those advertisements or commercials that would
7 prevent you from being able to sit fairly and impartially for
8 the plaintiffs and the defendant in this case?

9 (No response.)

10 THE COURT: All right. Thank you.

11 The record should reflect that no one has raised
12 their hand.

13 Let me ask you whether or not any of you have ever
14 been plaintiffs or defendants or witnesses in a civil or
15 criminal case? Please raise your hand.

16 (No response.)

17 THE COURT: All right. Again, the record should
18 reflect that no one has answered in the affirmative.

19 Have any of you -- yes, sir. I'm sorry.

20 PROSPECTIVE JUROR: I'm sorry. I didn't understand
21 that question.

22 THE COURT: Have you ever been a plaintiff, a
23 defendant or a witness in either a civil case or a criminal
24 case?

25 PROSPECTIVE JUROR: I'm presently a plaintiff in a

—Jury Selection—

1 case before Judge Stucky.

2 THE COURT: All right. Is there -- you've been to
3 the bench, sir.

4 PROSPECTIVE JUROR: What's that?

5 THE COURT: You have been here to the bench. And
6 state your number for us, please, your juror number and your
7 name.

8 PROSPECTIVE JUROR: I'm sorry.

9 THE COURT: That's okay. My husband swears I'm
10 plenty loud, but let me ask you --

11 (Laughter.)

12 THE COURT: -- state your name and your juror number
13 for me.

14 PROSPECTIVE JUROR: Oh, Julian Martin, 30.

15 THE COURT: All right. Mr. Martin, is there
16 anything -- you've been here to the bench and we've had a
17 discussion. Is there anything about the nature of that
18 lawsuit in which you were involved before Judge Stucky that
19 would prevent you from sitting fairly and impartially as a
20 juror here in this case?

21 PROSPECTIVE JUROR: No.

22 THE COURT: All right. I saw someone else raise
23 their hand. Yes, ma'am, state your name and number, please.

24 PROSPECTIVE JUROR: Melissa McClure, 19. And I'm
25 currently a plaintiff in a civil -- or a criminal complaint or

—Jury Selection—

1 lawsuit.

2 THE COURT: All right. Anything about that that
3 would enter into your deliberations in this case?

4 PROSPECTIVE JUROR: No, ma'am.

5 THE COURT: And that is about the theft that you told
6 us about earlier; is that correct?

7 PROSPECTIVE JUROR: Yes, ma'am.

8 THE COURT: All right. Thank you.

9 Did I see someone on the next -- yes, ma'am. State
10 your name and number, please.

11 PROSPECTIVE JUROR: Gaynell Boggess, Number 5.

12 I have been a witness on the stand before but I don't
13 know if it was criminal or -- you know, it was just property.
14 It was something about property so...

15 THE COURT: All right. How long ago was that?

16 PROSPECTIVE JUROR: Oh, my, it's been over ten years
17 ago or so.

18 THE COURT: Anything about that experience that would
19 cause you to be unable to sit fairly and impartially?

20 PROSPECTIVE JUROR: (Shakes head.)

21 THE COURT: Let me ask all of you who raised your
22 hands, I'm going to instruct you that you will base any
23 verdict only upon the evidence that you hear in this courtroom
24 and the instructions of law that I give you.

25 For those of you who have been in any way involved in

—Jury Selection—

1 other lawsuits, is there anything about that that's going to
2 come into your deliberations in this case? And, if so, please
3 raise your hand.

4 Yes, sir.

5 PROSPECTIVE JUROR: I would like to speak up there
6 if --

7 THE COURT: Sure, come on up. Counsel.

8 (The following occurred at sidebar.)

9 THE COURT: State your name for us.

10 PROSPECTIVE JUROR: Charles Brewer.

11 THE COURT: Please tell us --

12 PROSPECTIVE JUROR: I currently work for a small
13 family-owned company in Southern West Virginia and we deal
14 with the same stuff all the time, and to be fair to the
15 plaintiffs, I'm automatically on the side of the defendants
16 here --

17 THE COURT: Without hearing the evidence?

18 PROSPECTIVE JUROR: We are always getting sued for --
19 if somebody scrapes their finger, they want to turn around and
20 sue you, continuously.

21 THE COURT: And you don't know in this case that it's
22 a scrape of a finger.

23 PROSPECTIVE JUROR: I don't know anything about this
24 case, no.

25 THE COURT: All right.

—Jury Selection—

1 PROSPECTIVE JUROR: Just what I saw on the
2 commercials.

3 THE COURT: So you are saying that in any case
4 involving a plaintiff, no matter what the nature of it is, you
5 would automatically vote for the defendant?

6 PROSPECTIVE JUROR: No, I'm not saying that, but I'm
7 saying I'm already partial to the defendant's side because
8 we're always on the defendant's side. We're always getting
9 sued. And it's for -- whatever it is.

10 THE COURT: And so --

11 PROSPECTIVE JUROR: If we manufacture a product and
12 send it out on the road, the guy that's driving the delivery
13 truck, if there is an accident, they want to sue our company
14 for it.

15 THE COURT: Let me rephrase my question.

16 If there is any case where a plaintiff has sued a
17 manufacturer or a business, because of your position, you
18 would automatically be in favor of the defense without hearing
19 the evidence?

20 PROSPECTIVE JUROR: Probably so.

21 THE COURT: All right. Counsel, any questions you
22 want to ask?

23 MR. FARRELL: No questions.

24 MR. ADAMS: Yes. The Court is going to give you an
25 instruction in this case to set aside your personal

—Jury Selection—

1 experiences and base your decision just upon the evidence in
2 this courtroom and to be fair to both sides. Can you follow
3 that instruction?

4 PROSPECTIVE JUROR: Of course. But human nature
5 tells you -- I'm just trying to be fair to everybody.

6 MR. ADAMS: I understand, I understand.

7 PROSPECTIVE JUROR: My side and, you know, the
8 defendant's side -- plaintiff, defendant, whatever.

9 MR. ADAMS: And we appreciate that. But, again, you
10 do believe you could follow the law and be fair and base your
11 decision solely on the evidence?

12 PROSPECTIVE JUROR: Of course. But I also think that
13 it would take a lot more persuasion for myself than it would
14 somebody who just don't have any experience with this because
15 I've experienced it for years. I've been on their side, I've
16 been on your side.

17 MR. ADAMS: So you have been on the plaintiffs's side
18 and the defense side?

19 PROSPECTIVE JUROR: Yes, I have.

20 MR. ADAMS: And so is it fair to say that because you
21 have been on both sides, you know how important it is to be
22 fair, correct?

23 PROSPECTIVE JUROR: I do.

24 MR. ADAMS: And you do believe that you can be fair
25 in this case?

—Jury Selection—

1 PROSPECTIVE JUROR: Sure.

2 MR. ADAMS: Okay. So, even though you come into this
3 courtroom with these personal experiences, now that you know
4 that the Court is going to instruct you you've got to be fair,
5 you've got to base your decision on the evidence, and you've
6 got to look at a burden of proof, you can do all of that
7 properly, correct?

8 PROSPECTIVE JUROR: Of course.

9 THE COURT: Mr. Brewer, I appreciate your being
10 honest and that's what these parties need in order to get a
11 fair and impartial jury, and I'm going to excuse you from any
12 further service in this case. Thank you, sir.

13 (The prospective juror left sidebar.)

14 THE COURT: I will preserve any objection or
15 exception for you, Mr. Adams. Good try.

16 MR. ADAMS: Thank you, Your Honor.

17 THE COURT: Yes, sir.

18 (Sidebar concluded.)

19 THE COURT: Have any of you ladies and gentlemen
20 previously sat as a juror in a case? Please raise your hand.

21 (Hands raised.)

22 THE COURT: All right. Let me start back there on
23 the second row. State your number, please, and name.

24 PROSPECTIVE JUROR: Cathy Ferris, Juror 13. I served
25 in a -- as a juror on a drug-trafficking case, a criminal

—Jury Selection—

1 case, in New Mexico.

2 THE COURT: How long ago was that, Ms. Ferris?

3 PROSPECTIVE JUROR: I -- it's probably been about
4 five or six years.

5 THE COURT: All right. Anything about that
6 experience that will prevent you from sitting fairly and
7 impartially in this case?

8 PROSPECTIVE JUROR: I don't believe so.

9 THE COURT: All right. Anyone else on that row?
10 Yes, ma'am.

11 PROSPECTIVE JUROR: Margaret Cordray, Number 12.
12 About ten years ago, I was a juror on a drug case.

13 THE COURT: Where was that?

14 PROSPECTIVE JUROR: I'm sorry. It was in
15 Parkersburg.

16 THE COURT: All right. Ms. Cordray, anything about
17 that that would prevent you from sitting as a fair juror for
18 all of the parties in this case?

19 PROSPECTIVE JUROR: No, ma'am.

20 THE COURT: Thank you, ma'am. Someone else on that
21 row? Yes, sir.

22 PROSPECTIVE JUROR: William Boyle, 17.

23 It was in Wood County, probably ten years ago twice
24 under Judge Hill. It was a petit jury for driving under the
25 influence.

—Jury Selection—

1 THE COURT: All right. Let me ask you the same
2 question that I've asked the other jurors. Is there anything
3 about that experience, Mr. Boyle, that would prevent you from
4 sitting fairly and impartially for all of the parties in this
5 case?

6 PROSPECTIVE JUROR: No, ma'am.

7 THE COURT: Yes, ma'am.

8 PROSPECTIVE JUROR: Catherine Czeck, Number 26.

9 I sat on a wrongful discharge about six or seven
10 years ago.

11 THE COURT: Is it Czeck?

12 PROSPECTIVE JUROR: Czeck, yes.

13 THE COURT: Is there anything about that experience
14 which would preclude you from sitting fairly and impartially
15 in this case --

16 PROSPECTIVE JUROR: No, ma'am.

17 THE COURT: -- for everyone?

18 PROSPECTIVE JUROR: No, ma'am.

19 THE COURT: Another hand I saw? Yes, sir.

20 PROSPECTIVE JUROR: My name is Christopher Goertler,
21 Juror Number 23.

22 I served on a drug-related case in Laramie, Wyoming,
23 but it's been 15 years ago at least, and I was the alternate
24 juror on that trial.

25 THE COURT: All right. You didn't get to deliberate?

—Jury Selection—

1 PROSPECTIVE JUROR: I did not.

2 THE COURT: All right. Is there anything about that
3 experience that would prevent you from sitting fairly in this
4 case?

5 PROSPECTIVE JUROR: No.

6 THE COURT: All right. Thank you.

7 PROSPECTIVE JUROR: Laura Wetherholt, Juror Number
8 28.

9 I served on a case where someone took a fall and was
10 suing the property owner five or six years ago, here in town.

11 THE COURT: All right. I'm sorry?

12 PROSPECTIVE JUROR: It was here in town.

13 THE COURT: Here in Charleston.

14 Ms. Wetherholt, you have had discussions with us here
15 at the bench. You know what this case is about. Is there
16 anything about that experience that would preclude you from
17 sitting fairly and impartially?

18 PROSPECTIVE JUROR: No, ma'am.

19 THE COURT: Anyone else who sat as a juror
20 previously? Yes, ma'am.

21 PROSPECTIVE JUROR: I sat as a juror in Tennessee for
22 a DUI case.

23 THE COURT: And how long ago was that?

24 PROSPECTIVE JUROR: It's been about 20.

25 THE COURT: 20 years ago?

—Jury Selection—

1 PROSPECTIVE JUROR: 20 years.

2 THE COURT: And you are Ms. Flanagan; is that
3 correct?

4 PROSPECTIVE JUROR: Flanagan, yeah. 31.

5 THE COURT: Ms. Flanagan, is there anything about
6 that process that would prevent you from sitting fairly and
7 impartially for everyone in this case?

8 PROSPECTIVE JUROR: No.

9 THE COURT: I'm sorry?

10 PROSPECTIVE JUROR: No, there isn't.

11 THE COURT: All right. Did I miss any hands?

12 (No response.)

13 THE COURT: Thank you, ladies and gentlemen.

14 Other than what's previously been discussed here at
15 the bench, do any of you have any legal training or work in
16 the legal profession? Please raise your hand.

17 Yes, ma'am. I think you discussed it with us here at
18 the bench. Stand and give us your name and your juror number,
19 please.

20 PROSPECTIVE JUROR: It's Angela Shears, Number 16.

21 I'm currently a Magistrate Assistant in Wirt County.

22 THE COURT: All right. Thank you.

23 Another hand there? Yes, ma'am.

24 PROSPECTIVE JUROR: Catherine Czeck, Number 26.

25 I have a paralegal degree.

—Jury Selection—

1 THE COURT: And do you work in the field now,
2 Ms. Czeck?

3 PROSPECTIVE JUROR: No, ma'am.

4 THE COURT: All right. You say that happily; is that
5 correct?

6 PROSPECTIVE JUROR: Yeah, yeah, I have a job.

7 THE COURT: Is there anything about your knowledge as
8 a paralegal that you will bring into this case? In other
9 words, I'm going to give some instructions on the law that
10 will be the law in this case. Are you able to listen to the
11 evidence and apply that law and leave anything that you've
12 garnered as a paralegal outside of this case?

13 PROSPECTIVE JUROR: Yes.

14 THE COURT: Anyone else, did I see? Yes, ma'am. I'm
15 sorry.

16 PROSPECTIVE JUROR: Lindsay Powell, Juror 20 -- Juror
17 35. I worked as a gopher/secretary for a lawyer about ten
18 years ago.

19 THE COURT: And who was that, ma'am?

20 PROSPECTIVE JUROR: The lawyer? Belinda Morton.

21 THE COURT: All right. And are you still so
22 employed?

23 PROSPECTIVE JUROR: No. I am employed but not
24 with -- not with that.

25 THE COURT: You are not employed in the legal field?

—Jury Selection—

1 PROSPECTIVE JUROR: No, ma'am.

2 THE COURT: Is there anything about your employment
3 there that would enter into this case? In other words, I'm
4 going to need the jurors to apply just the law that I give to
5 you in this case to the facts that you find have been proven
6 by a preponderance of the evidence. Will you be able to
7 accept that and apply only that in this case?

8 PROSPECTIVE JUROR: Yes.

9 THE COURT: Mr. Farrell, you stood?

10 MR. FARRELL: Yes. Can we approach?

11 THE COURT: Yes, sir.

12 (The following occurred at sidebar.)

13 MR. FARRELL: Mr. -- Juror Number 26, Catherine
14 Czeck, C-Z-E-C-K --

15 THE COURT: Czeck.

16 MR. FARRELL: -- is a current claims adjuster for
17 Brick Street, and I would request that you invite her up here
18 and ask her the heart-of-hearts question to see if she has any
19 bias, based on her experience working for Brick Street,
20 against plaintiffs.

21 THE COURT: Okay. Do you voice an objection,
22 Mr. Adams?

23 MR. ADAMS: I don't think it's necessary, Your Honor.
24 I think you have already covered that in the general
25 questions.

—Jury Selection—

1 THE COURT: All right. I preserve your objection and
2 exception to my questioning the witness -- the juror I mean.

3 (Sidebar concluded.)

4 Ms. Czeck?

5 (The following occurred at sidebar.)

6 THE COURT: Good morning to you. Where are you
7 currently employed?

8 PROSPECTIVE JUROR: Brick Street Insurance.

9 THE COURT: Tell me what you do at Brick Street.

10 PROSPECTIVE JUROR: I'm a claims examiner.

11 THE COURT: And, as a claimants examiner, tell me
12 what your duties are, please.

13 PROSPECTIVE JUROR: Reviewing work-related injuries,
14 compensable, and medical management, as well as litigation
15 management -- legal, litigation management.

16 THE COURT: You've heard me give the jury a very
17 brief synopsis of what this case is about. Is there anything
18 about that job that would cause you to lean against the
19 plaintiffs?

20 PROSPECTIVE JUROR: No.

21 THE COURT: Or in favor of plaintiffs?

22 PROSPECTIVE JUROR: No.

23 THE COURT: Against the defendant?

24 PROSPECTIVE JUROR: No, ma'am.

25 THE COURT: Or in favor of them?

—Jury Selection—

1 PROSPECTIVE JUROR: No.

2 THE COURT: In that work, what is the end result of
3 your work?

4 PROSPECTIVE JUROR: Hopefully, a successful return to
5 work for the injured worker.

6 THE COURT: Okay.

7 PROSPECTIVE JUROR: At a low cost for the insurance
8 company.

9 THE COURT: The plaintiffs in this case will be
10 asking for damages if the jury should believe that, by a
11 preponderance of the evidence, that the defendant is in any
12 way liable. The defendant contests that. Is there anything
13 about your position that would prevent you from being able to
14 give damages to plaintiff if you found they were proven by a
15 preponderance of the evidence?

16 PROSPECTIVE JUROR: I don't believe so.

17 THE COURT: Counsel, either of you want to inquire?
18 Mr. Farrell?

19 MR. FARRELL: I have some questions, yes, Your Honor.
20 In your job, do you ever make a determination of
21 whether the injured employee did anything wrong?

22 PROSPECTIVE JUROR: Such as?

23 MR. FARRELL: Contributed or caused their own
24 accident?

25 PROSPECTIVE JUROR: It would not hinder the

—Jury Selection—

1 compensability of a claim.

2 MR. FARRELL: Okay. In your job, do you determine
3 the amount of compensation that an injured worker deserves?

4 PROSPECTIVE JUROR: No. It's based on law and wages.

5 MR. FARRELL: Okay. Aside from law and wages, are
6 you involved in awarding compensation for bodily injury?

7 PROSPECTIVE JUROR: We pay medical benefits, not
8 necessarily to an injured worker, unless the claim goes for a
9 final settlement. We pay the medical bill to the provider.

10 MR. FARRELL: Okay. So your role, are you
11 determining permanent partial disability or are you just
12 determining wage loss and medical bills?

13 PROSPECTIVE JUROR: Independent medical valuations
14 determine the permanent partial disability.

15 MR. FARRELL: So, in the course of your work, do you
16 find that injured workers have a tendency to exaggerate their
17 injuries?

18 PROSPECTIVE JUROR: Not all of them, no.

19 MR. FARRELL: Some of them?

20 PROSPECTIVE JUROR: I would say.

21 MR. FARRELL: Do you believe that there are too many
22 lawsuits?

23 PROSPECTIVE JUROR: No.

24 MR. FARRELL: Do you believe there are too many
25 frivolous workers' compensation claims?

—Jury Selection—

1 PROSPECTIVE JUROR: No.

2 MR. FARRELL: In your dealings with injured workers,
3 do you believe that most of them are being fair and honest in
4 the claim process?

5 PROSPECTIVE JUROR: The majority.

6 MR. FARRELL: You have a good experience working at
7 Brick Street?

8 PROSPECTIVE JUROR: Yes.

9 MR. FARRELL: How long have you worked with them?

10 PROSPECTIVE JUROR: Eight years -- it will be eight
11 years next month.

12 MR. FARRELL: All right. One of the claims in this
13 case involvements punitive damages. Are you aware of punitive
14 damages?

15 PROSPECTIVE JUROR: Um-hum.

16 MR. FARRELL: Yes?

17 PROSPECTIVE JUROR: Yes.

18 MR. FARRELL: Based on the fact that you are a claims
19 adjuster working for an insurance company in West Virginia,
20 would you feel awkward at all if you were to award punitive
21 damages against a corporation in this case and have to go back
22 to work at Brick Street?

23 PROSPECTIVE JUROR: No.

24 MR. FARRELL: It wouldn't bother you at all?

25 PROSPECTIVE JUROR: Actually not, no. I don't -- we

—Jury Selection—

1 don't consider punitive damages in our files but, you know,
2 I'm not at work so...

3 MR. FARRELL: Okay. So, based upon your background
4 with having to calculate bodily injury damages, are you able
5 to set aside your calculations under the law for workers' comp
6 and follow the judge's mandate and instructions on how to
7 award damages in this case?

8 PROSPECTIVE JUROR: I feel that I am.

9 MR. FARRELL: Okay. Thank you for answering my
10 questions.

11 THE COURT: Anything further?

12 MR. ADAMS: Yes, ma'am.

13 The -- I think you indicated that you had -- your
14 grandmother had a pacemaker; is that correct?

15 PROSPECTIVE JUROR: Yes.

16 MR. ADAMS: Has she had any problems as a result of
17 the pacemaker?

18 PROSPECTIVE JUROR: She did not. She's no longer
19 with us, but no, she didn't have any issues with it.

20 MR. ADAMS: And, you know, you understand that there
21 is a different burden of proof that exists in a workers'
22 compensation case as opposed to a civil case like this?

23 PROSPECTIVE JUROR: Yes.

24 MR. ADAMS: So you understand that in workers'
25 compensation cases, basically, the worker has to prove that he

—Jury Selection—

1 was injured while on the job.

2 PROSPECTIVE JUROR: Um-hum. Yes.

3 MR. ADAMS: Okay. But in a civil case, the
4 plaintiffs have a higher burden of proof to prove by the
5 greater weight of the evidence?

6 PROSPECTIVE JUROR: Yes.

7 MR. ADAMS: Okay. So you understand the difference
8 of that and would be able to apply that?

9 PROSPECTIVE JUROR: I do understand, yes.

10 MR. ADAMS: Okay. I don't have any other questions.

11 THE COURT: Mr. Farrell?

12 MR. FARRELL: With regard to independent medical
13 exams, you use them in your role as a claims adjuster for
14 Brick Street, correct?

15 PROSPECTIVE JUROR: Um-hum. Yes.

16 MR. FARRELL: In this case, there may be a doctor or
17 healthcare provider that testifies in a similar capacity.
18 Would you, based on your experience as a claims adjuster, tell
19 me how -- how much weight you would apply to the testimony of
20 an IME doctor as compared to a treating healthcare provider?

21 THE COURT: I'm sorry. Repeat that for me, please.

22 PROSPECTIVE JUROR: Thank you.

23 THE COURT: Go ahead.

24 MR. FARRELL: You have experience with IME doctors
25 with workers' compensation?

—Jury Selection—

1 PROSPECTIVE JUROR: That's correct.

2 MR. FARRELL: Do you have a tendency, based on your
3 background in workers' comp, to place greater weight on IME
4 doctors than, say, a treating doctor?

5 PROSPECTIVE JUROR: A greater weight?

6 MR. FARRELL: (Nods head.) Or a lesser weight or
7 equal weight?

8 PROSPECTIVE JUROR: When I get the report, the
9 treating physician has a chance to respond to that.

10 MR. FARRELL: Okay.

11 PROSPECTIVE JUROR: So then the evidence is looked at
12 as far as -- I'm going to process -- I'm sorry -- I'm going to
13 process the report. They're going to deal with it from there.
14 I have rules and regulations I have to follow. As far as
15 giving weight either way or the other, no, I follow what's in
16 the report.

17 MR. FARRELL: What do you believe is the role of the
18 IME in your job title?

19 PROSPECTIVE JUROR: I -- my doctor is -- my IME
20 doctor is to determine whether the individual has reached
21 maximum medical improvement and is able to return to their
22 pre-injured position.

23 MR. FARRELL: No further questions.

24 THE COURT: Any questions?

25 MR. ADAMS: No, ma'am.

—Jury Selection—

1 THE COURT: Thank you. You may return.

2 (The prospective juror left sidebar.)

3 THE COURT: Just a minute, counsel, with me. Are
4 there any objections to any of the jurors thus far?

5 MR. FARRELL: None from the plaintiffs.

6 THE COURT: All right.

7 (Sidebar concluded.)

8 THE COURT: Ms. Moser, will you join us, please.

9 (The following occurred at sidebar.)

10 MR. ADAMS: We did have -- we can bring it up later.
11 We can bring it up after this witness.

12 (The prospective juror approached sidebar.)

13 THE COURT: Good morning. Ms. Moser, I have reviewed
14 your jury questionnaire and I believe you indicated that you
15 had a sling?

16 PROSPECTIVE JUROR: No, I did not.

17 PROSPECTIVE JUROR: I had a friend who had one.

18 THE COURT: Okay. That was successful for awhile?

19 PROSPECTIVE JUROR: Yes.

20 THE COURT: And we discussed that, didn't we?

21 PROSPECTIVE JUROR: No, we did not, but --

22 THE COURT: Okay. Tell me about that.

23 PROSPECTIVE JUROR: She was having incontinence and
24 got a sling is what she said, and I guess they only last ten
25 years and so it was kind of wearing out now, but other than

—Jury Selection—

1 that, she's had no problems.

2 THE COURT: Okay. And that's consistent with what I
3 read.

4 You've heard me say briefly what this case is about.

5 PROSPECTIVE JUROR: (Nods head.)

6 THE COURT: I'm going to give you an instruction that
7 you are to base any verdict solely on what you hear here in
8 this courtroom and the instructions of the law that I give to
9 you. Are you able to keep, with what you know about your
10 friend's situation, outside of your deliberations in this
11 case?

12 PROSPECTIVE JUROR: Yes.

13 THE COURT: There will be evidence that they had the
14 device implanted and it resulted in complications. Is there
15 anything about your knowledge of your friend's situation that
16 will cause you to think that that's probably the case or not
17 the case?

18 PROSPECTIVE JUROR: No.

19 THE COURT: All right. I have your assurance that
20 you will base any verdict solely upon the evidence that you
21 hear in the courtroom?

22 PROSPECTIVE JUROR: Yes.

23 THE COURT: Counsel, either of you have any
24 questions?

25 MR. FARRELL: Earlier today, did you say it was your

—Jury Selection—

1 brother-in-law --

2 PROSPECTIVE JUROR: Yes.

3 MR. FARRELL: -- that worked for Boston Scientific?

4 PROSPECTIVE JUROR: Yes.

5 MR. FARRELL: Did your brother-in-law and Boston
6 Scientific separate on good terms?

7 PROSPECTIVE JUROR: Yes.

8 MR. FARRELL: Do you have a favorable opinion of
9 Boston Scientific based on your brother-in-law's employment
10 with them?

11 PROSPECTIVE JUROR: Yes.

12 MR. FARRELL: Do you believe, based upon your
13 experience with your brother-in-law -- do you like your
14 brother-in-law?

15 PROSPECTIVE JUROR: Um-hum.

16 MR. FARRELL: That's a yes?

17 PROSPECTIVE JUROR: Yes.

18 MR. FARRELL: Do you have a favorable experience
19 through your brother-in-law with Boston Scientific that you
20 would, say, trust or believe at the outset the things they
21 say?

22 PROSPECTIVE JUROR: As much as I'd believe in any big
23 company and what they said.

24 MR. FARRELL: So is -- your brother-in-law wasn't
25 fired, correct?

—Jury Selection—

1 PROSPECTIVE JUROR: No, no.

2 MR. FARRELL: Did he leave to go to greener, bigger
3 pastures?

4 PROSPECTIVE JUROR: Yes.

5 MR. FARRELL: And is that your only experience with
6 Boston Scientific is through your brother-in-law?

7 PROSPECTIVE JUROR: Yes.

8 MR. FARRELL: And your brother-in-law lives near you?

9 PROSPECTIVE JUROR: He lives in Pittsburgh.

10 MR. FARRELL: And he's married to your sister?

11 PROSPECTIVE JUROR: No. It's my husband's brother.

12 MR. FARRELL: Your husband's brother. Okay.

13 And do you see him a lot or a little or --

14 PROSPECTIVE JUROR: (Indicating.)

15 MR. FARRELL: Enough?

16 PROSPECTIVE JUROR: Yeah, plenty. Once a month.

17 MR. FARRELL: That's all the questions I have.

18 PROSPECTIVE JUROR: Okay.

19 THE COURT: Mr. Adams?

20 MR. ADAMS: Yes, I have a couple of questions.

21 So you can be fair to both sides in this case,
22 correct?

23 PROSPECTIVE JUROR: I think so.

24 MR. ADAMS: And you said that, in response to
25 counsel's questions, about -- I won't repeat the question, but

—Jury Selection—

1 you said something to the effect, much as you can believe in
2 any big company. What did you mean by that?

3 PROSPECTIVE JUROR: Take everything you hear with a
4 grain of salt.

5 MR. ADAMS: Yeah. Do you apply that same standard to
6 an individual as well as a company?

7 PROSPECTIVE JUROR: Pretty much.

8 MR. ADAMS: And so I've got to know, obviously, I
9 represent a big company. It's Boston Scientific.

10 PROSPECTIVE JUROR: Um-hum.

11 MR. ADAMS: Do you -- would you tend to in any way
12 discount information and evidence that we present because the
13 people work at a big company?

14 PROSPECTIVE JUROR: No.

15 MR. ADAMS: Do you believe that big companies always
16 put profit over people?

17 PROSPECTIVE JUROR: I'm not sure that the
18 stockholder -- I don't know that the finance guys don't, but I
19 don't think that the people that are developing or whatever --
20 I think they're -- they're genuine.

21 MR. ADAMS: Okay. Now, you said your
22 brother-in-law, I believe you said he worked for Boston
23 Scientific and he sold pacemakers or what?

24 PROSPECTIVE JUROR: Stents.

25 MR. ADAMS: Stents. So cardiovascular?

—Jury Selection—

1 PROSPECTIVE JUROR: Um-hum.

2 MR. ADAMS: Did you even know whether Boston
3 Scientific sold mesh products?

4 PROSPECTIVE JUROR: No, I didn't.

5 MR. ADAMS: Okay. And your friend who had the sling
6 implanted, what is her name?

7 PROSPECTIVE JUROR: Beth Hendricks.

8 MR. ADAMS: And how often do you see her?

9 PROSPECTIVE JUROR: Used to see her a lot.
10 Haven't -- infrequently.

11 MR. ADAMS: Okay. And is it fair to say that she had
12 a good experience with the sling?

13 PROSPECTIVE JUROR: She did.

14 MR. ADAMS: Do you know who her doctor was?

15 PROSPECTIVE JUROR: No, I don't.

16 MR. ADAMS: Okay. And based upon all the questions
17 that have been asked, do you believe you can be fair and
18 impartial to both sides?

19 PROSPECTIVE JUROR: I do.

20 MR. ADAMS: Okay. Thank you.

21 THE COURT: Let me ask you one last question. I'm
22 going to instruct you to assess the credibility of the
23 witnesses. If I understand you correctly, and please don't
24 let me put words in your mouth, you will assess the
25 credibility -- you will be able to apply that instruction equally

—Jury Selection—

1 to individuals as you are to representatives of the
2 corporation; is that correct?

3 PROSPECTIVE JUROR: I believe I will, yeah.

4 MR. ADAMS: Yes, sir?

5 MR. FARRELL: One follow-up question?

6 THE COURT: Yes, sir.

7 MR. FARRELL: In this case, the plaintiffs are
8 alleging that they have been harmed and they are asking for
9 compensatory and punitive damages --

10 MR. ADAMS: Your Honor, that was the issue I wanted
11 to bring up on the damage issue, punitive damages issue.

12 THE COURT: Okay. I think we are done for the
13 moment. Thank you very much.

14 PROSPECTIVE JUROR: Okay.

15 (The prospective juror left sidebar.)

16 MR. ADAMS: And I should have brought that up before
17 Ms. Moser came up, but I don't think it's appropriate that
18 they should be asking about punitive damages now until the
19 Court makes a decision, as it will, and there is prima facie
20 evidence to support a claim of punitive damages.

21 THE COURT: All right.

22 MR. FARRELL: Well, I certainly agree at the outset
23 that we will follow the law as you provide it. The reason
24 that we're asking is that, hypothetically, if we do meet our
25 burden, and there is evidence from other cases across the

—Jury Selection—

1 country that the burden has been met, I would -- what I'm
2 concerned about is whether or not this witness would hesitate
3 in awarding fair punitive damages because she would feel that
4 it would reflect poorly on her brother-in-law's former
5 company. And so I don't mean to go into any substantive
6 discussion, other than the fact of whether her
7 brother-in-law's relationship at Boston Scientific would cause
8 her some pause to -- do you follow me?

9 THE COURT: I do follow you, and I'm being rude in
10 cutting you off. I will ask the question coming from me as a
11 "if it's appropriate." I think it's a fair question. I think
12 you should be able to explore that. I will take care of it.

13 MR. FARRELL: I'm sorry. Are you going to do that?

14 THE COURT: I am going to ask her to come back up
15 here.

16 (Sidebar concluded.)

17 THE COURT: Ms. Moser?

18 MR. FARRELL: Including the --

19 (The prospective juror approached sidebar.)

20 THE COURT: At the conclusion of this case, when I
21 give the instructions on the law, one of the instructions that
22 you will be given is that if you should find that the
23 defendant is liable to any one or more of the plaintiffs, I
24 would ask you to assess what damages could be applicable. If
25 I ask you that question and if I would submit to you both

—Jury Selection—

1 compensatory and punitive damages, is there anything about
2 your brother-in-law's -- your brother-in-law having been
3 employed with Boston Scientific that would preclude you from
4 awarding punitives if they are appropriate in this case?

5 PROSPECTIVE JUROR: No.

6 THE COURT: What about compensatories?

7 PROSPECTIVE JUROR: No, because -- no.

8 THE COURT: Do you know if your brother has any
9 financial interest at all in Boston Scientific?

10 PROSPECTIVE JUROR: I don't know.

11 THE COURT: Okay. If you should become aware that he
12 does, would that in any way change the answer that you just
13 gave to me?

14 PROSPECTIVE JUROR: No. No.

15 THE COURT: Thank you, Ms. Moser.

16 PROSPECTIVE JUROR: Um-hum.

17 (The prospective juror left sidebar.)

18 THE COURT: Thank you all.

19 (Sidebar concluded.)

20 THE COURT: Yes, sir?

21 PROSPECTIVE JUROR: Chester Mitchell, Juror Number
22 22. Could I approach the bench, please?

23 THE COURT: Yes, sir.

24 (The following occurred at sidebar.)

25 PROSPECTIVE JUROR: One of the questions, that I was

—Jury Selection—

1 involved in a lawsuit in 2010, an employment lawsuit.

2 THE COURT: Yes, sir.

3 PROSPECTIVE JUROR: And I wanted to say that because
4 I thought I got skipped over. You asked that question. And I
5 currently have a lawsuit now against McDonald's, with my
6 little girl with metal in ice cream.

7 THE COURT: Is there anything about either of those
8 lawsuits that would prevent you from seeing fairly in this
9 case, Mr. Mitchell?

10 PROSPECTIVE JUROR: No.

11 THE COURT: For both the plaintiffs and the
12 defendant?

13 PROSPECTIVE JUROR: No.

14 THE COURT: All right. I appreciate your answering
15 and I apologize if I overlooked your hand out there. Thank
16 you, sir.

17 PROSPECTIVE JUROR: Okay.

18 (Sidebar concluded.)

19 THE COURT: Ladies and gentlemen of the jury, I am
20 going to instruct you that each of the plaintiffs in this case
21 is required to prove her case by a preponderance of the
22 evidence. That generally means that they have to prove that
23 something is more likely so than not so. Is there anyone on
24 the panel who could not follow that instruction and would hold
25 the plaintiffs to either a lesser or higher burden than you

—Jury Selection—

1 were instructed on? Please raise your hand.

2 (No response.)

3 THE COURT: All right. The record should reflect
4 that no one has done so.

5 In connection with the plaintiff having that burden
6 of proof, is there anyone here who believes that just because
7 a lawsuit has been brought, that the defendant must have done
8 something wrong? Please raise your hand.

9 (No response.)

10 THE COURT: All right. Again, the record should
11 reflect that no one has done so.

12 I'm also going to instruct you, ladies and gentlemen,
13 that you are to keep an open mind and not make a judgment on
14 the case until after you have heard all of the evidence, heard
15 the closing arguments, and had the ability to discuss the case
16 with your fellow jurors in the jury room. Is there anyone
17 here who believes that they could not reserve judgment until
18 the conclusion of the case and until you deliberate? Yes,
19 sir?

20 PROSPECTIVE JUROR: May I speak up there, please?

21 THE COURT: Yes, sir, come on up, please.

22 (The following occurred at sidebar.)

23 THE COURT: Mr. Aliff, Number 15.

24 PROSPECTIVE JUROR: I don't believe I could be fair
25 in this type of trial, where people just try to get something

—Jury Selection—

1 for nothing. All of the medical experiences I've had,
2 including mine, has been successful.

3 THE COURT: All right. Well, let me ask you this:
4 If you listen to the evidence in this case and you found that
5 people were not trying to get something for nothing, would you
6 be able to follow the evidence and the instructions on the law
7 that I gave to you?

8 PROSPECTIVE JUROR: Probably not. I've --

9 THE COURT: Why is that?

10 PROSPECTIVE JUROR: I've got my own opinion and --

11 THE COURT: Tell me about your opinions.

12 PROSPECTIVE JUROR: Just seems like everybody with
13 credit cards, they don't pay the bill, and people at work,
14 they're the same way. They want to get something for nothing.
15 They don't pay the bill and they are trying to sue, seems like
16 they're always trying to sue for things.

17 THE COURT: And you understand that these cases have
18 nothing to do with credit cards. You indicated earlier that
19 you needed to leave. Is that correct?

20 PROSPECTIVE JUROR: I would like to.

21 THE COURT: And you heard me give the jury a short
22 synopsis of what this case was about; is that correct?

23 PROSPECTIVE JUROR: Yes, ma'am.

24 THE COURT: And, to date, you have not heard any of
25 the evidence.

—Jury Selection—

1 PROSPECTIVE JUROR: Yes, ma'am.

2 THE COURT: Are you trying to tell me that the oath
3 that you took a little while ago, that you would not follow
4 that oath, Mr. Aliff?

5 PROSPECTIVE JUROR: No, ma'am.

6 THE COURT: What are you trying to say?

7 PROSPECTIVE JUROR: I'm telling the truth about what
8 my opinion is.

9 THE COURT: Without knowing anything about the case?

10 PROSPECTIVE JUROR: Yes, ma'am.

11 THE COURT: All right. Counsel, is there any
12 questions you have?

13 MR. FARRELL: (Shakes head.)

14 MS. WAGSTAFF: (Shakes head.)

15 THE COURT: Mr. Adams?

16 MR. ADAMS: You took an oath to follow the Court's
17 instruction. Do you recall that?

18 PROSPECTIVE JUROR: Yes, sir.

19 MR. ADAMS: And the Court is going to give you
20 instructions in this case that you have to base your decision
21 solely on the evidence.

22 PROSPECTIVE JUROR: Yes, sir.

23 MR. ADAMS: Can you do that?

24 PROSPECTIVE JUROR: I don't -- I honestly don't
25 believe so, sir.

—Jury Selection—

1 THE COURT: All right. You can take your seat.

2 PROSPECTIVE JUROR: Yes, ma'am.

3 THE COURT: Counsel, stay.

4 (The prospective juror left sidebar.)

5 THE COURT: He wants to go.

6 MR. ADAMS: Yes.

7 THE COURT: I don't think he's making any effort
8 whatsoever --

9 MR. ADAMS: Yes.

10 THE COURT: -- outside of that.

11 Let me say to you all that -- well, let me hear. Is
12 there an objection to my letting him go?

13 MR. ADAMS: No.

14 MR. FARRELL: (Shakes head.)

15 MS. WAGSTAFF: (Shakes head.)

16 THE COURT: I'm going to excuse the juror when we
17 strike. I am not going to excuse him at this point.

18 MR. BONASSO: You're going to make him wait.

19 THE COURT: So you will know for purposes of your
20 strikes.

21 (Sidebar concluded.)

22 THE COURT: Ladies and gentlemen of the jury, I'm
23 going to say in the last 15 to 20 years, there has been a lot
24 of media coverage about there being too many lawsuits or
25 lawsuit abuse. Is there anyone who has not already been to

—Jury Selection—

1 the bench who has such strong feelings about that issue that
2 you -- it would interfere with your ability to be fair and
3 impartial in this case before you even heard any evidence?

4 (No response.)

5 THE COURT: Is there anyone sitting here who has not
6 been to the bench who feels that you could not base your
7 verdict solely on the evidence and the law that I give to you
8 in my instructions, in other words?

9 (No response.)

10 THE COURT: All right. The record should reflect
11 that no one has raised their hand.

12 Does anyone have any hearing, sight or other health
13 issues that would render you incapable of performing your
14 duties as a juror?

15 (No response.)

16 THE COURT: We have been here for awhile, you've
17 heard a good bit about this case, some of you more than
18 others, having come to the bench. As you all sit there, are
19 you conscious of any bias or prejudice for or against the
20 plaintiffs in this case? Please raise your hand.

21 (No response.)

22 THE COURT: Are any of you conscious of any bias or
23 prejudice for or against the defendant in this case? Please
24 raise your hand.

25 (No response.)

—Jury Selection—

1 THE COURT: Is there anyone here who has any
2 religious or other beliefs that would not allow you to sit as
3 a juror in this case and to sit fairly and impartially for all
4 of the parties?

5 (No response.)

6 THE COURT: The record should reflect that no one has
7 answered in the affirmative.

8 This question will cover most of what I've asked you
9 just recently. Is there anyone who is sitting here now who
10 has already formed an opinion as to how this case should be
11 resolved? Please raise your hand.

12 (No response.)

13 THE COURT: All right. The parties have indicated to
14 me that they are going to call certain witnesses in this case
15 and I am going to try to go over that list with you. If you
16 know any of these people, other than what you have previously
17 brought to my attention, please raise your hand:

18 Jacquelyn Tyree, Jeanie Blankenship, Carol Campbell,
19 Chris Wilson, Jimmy Mays, Peggy Pence, Dr. Bruce Rosenzweig,
20 Dr. Richard Trepeta. Am I pronouncing that correctly,
21 counsel?

22 MR. LOVE: Trepeta, Your Honor.

23 THE COURT: Trepeta. Thank you. Evidently not.

24 Dr. Trepeta, Dr. Christopher Walker, Kathleen
25 Fantoni, Doreen Rao, Robert Tyree, Dr. Thomas Barker, Dr.

—Jury Selection—

1 Jerry Blaivas, Dr. Vladamir Iakovlev, Dr. Donald Ostergard,
2 Dr. Alison Vredenburgh, Dr. Bhanot -- it's spelled
3 B-H-A-N-O-T -- Dr. Bernard Luby, Dr. Joshua Lohri,
4 Dr. Jagannath, and it's spelled J-A-G-A-N-N-A-T-H.

5 Yes. Yes, ma'am.

6 PROSPECTIVE JUROR: Sara Adkins, Number 6. I know
7 Dr. Luby.

8 THE COURT: Dr. Bernard Luby?

9 PROSPECTIVE JUROR: Yes, ma'am.

10 THE COURT: In what capacity?

11 PROSPECTIVE JUROR: He was my doctor twice. He
12 delivered two of my babies.

13 THE COURT: All right. Let me see you here please at
14 the bench.

15 (The following occurred at sidebar.)

16 THE COURT: State your name for the record.

17 PROSPECTIVE JUROR: Sara Adkins.

18 THE COURT: Okay. Ms. Adkins, over what time period
19 have you known this doctor?

20 PROSPECTIVE JUROR: Since he delivered my first son
21 in 1997.

22 THE COURT: Okay. And he's still your doctor, as I
23 understand it?

24 PROSPECTIVE JUROR: No, ma'am. He delivered my
25 daughter in 2007 and after that, I haven't been back to him.

—Jury Selection—

1 THE COURT: All right. I anticipate that he could be
2 a witness in this case.

3 PROSPECTIVE JUROR: Yes, ma'am.

4 THE COURT: I'm going to give you jurors an
5 instruction of law on how to assess the believability or
6 credibility of a witness's testimony. I'll give you certain
7 tools to apply. Would you be able to apply that instruction
8 on the law to Dr. Luby the same as you would to a witness that
9 you did not know?

10 PROSPECTIVE JUROR: Yes, ma'am.

11 THE COURT: In other words, would you automatically
12 believe him more or believe him less because of the knowledge
13 that you have of him?

14 PROSPECTIVE JUROR: No.

15 THE COURT: Okay. In this case, you tell me, and
16 don't let me put words in your mouth. Would his testimony
17 coming in be on equal footing with, let's say, Dr. Pence that
18 you don't know until you heard it and used my instruction on
19 how to assess the credibility?

20 PROSPECTIVE JUROR: I believe so. I went to him. I
21 don't know, you know. I don't have any reason to believe him
22 any more than anybody else.

23 THE COURT: Do you have any reason to believe him any
24 less?

25 PROSPECTIVE JUROR: No, ma'am.

—Jury Selection—

1 THE COURT: Okay. Any questions, either of the
2 lawyers?

3 MR. FARRELL: I've got a couple of quick questions.
4 If Dr. Luby testified to Issue A and a different
5 doctor testified and said it's not A, it's B, would you be
6 more likely to believe Dr. Luby because of your relationship
7 with him?

8 PROSPECTIVE JUROR: No, sir. I have no reason to
9 believe him over anybody else.

10 MR. FARRELL: Okay. I guess what we are really
11 trying to get to is there is going to be several witnesses
12 that may disagree.

13 PROSPECTIVE JUROR: Right.

14 MR. FARRELL: Would you be able to weigh their
15 testimony with the instructions from the judge regardless of
16 your prior relationship with Dr. Luby?

17 PROSPECTIVE JUROR: Yes. Yes.

18 MR. ADAMS: And --

19 MR. FARRELL: Was Dr. Luby also your regular
20 gynecologist, outside of your obstetrician?

21 PROSPECTIVE JUROR: No, he just delivered my babies.
22 He's not my gynecologist.

23 MR. FARRELL: And forgive me for asking.

24 PROSPECTIVE JUROR: That's okay.

25 MR. FARRELL: Did you have a good experience with

—Jury Selection—

1 Dr. Luby?

2 PROSPECTIVE JUROR: Yes.

3 MR. FARRELL: Okay.

4 PROSPECTIVE JUROR: He delivered me, too, when I was
5 born.

6 MR. FARRELL: Wow.

7 THE COURT: Counsel? Any questions?

8 MR. ADAMS: No questions. Thank you.

9 THE COURT: Thank you.

10 (The prospective juror left sidebar.)

11 THE COURT: Anything further?

12 MR. FARRELL: No.

13 THE COURT: Okay. Thank you.

14 (Sidebar concluded.)

15 THE COURT: Dr. Cyrus Mali, Dr. Vellore Kasturi,
16 Dr. Susan Capelle, Dr. Kelley Dopson, Dr. Lonny Green,
17 Dr. Stephen Badylak, Dr. Stephen Spiegelberg, Dr. Patrick
18 Culligan, Janice Connor, Christopher Cuddy, Robert
19 Miragliuolo. Is that correct, counsel?

20 MR. ADAMS: Yes, Your Honor.

21 THE COURT: All right. James Goddard, Alison Timm,
22 Dr. Christine Brauer, Dr. Robert Stanley, Lee Sullivan, Donna
23 Gardner, Dr. Sandhu, Cheryl Lecroy, Sharon Crawley, Dr. Gary
24 Winn, Dr. Samuel Heywood, Dr. Sheth, Dr. Michael Lassere,
25 Dr. Michael Margolis, Evan Brasington or Brasington, Arthur

—Jury Selection—

1 Butcher, Alfred Intoccia -- that's spelled I-N-T-O-C-C-I-A.

2 PROSPECTIVE JUROR: Judge?

3 THE COURT: Yes, sir.

4 PROSPECTIVE JUROR: Dr. Heywood? What kind of doctor
5 is he?

6 THE COURT: Dr. Samuel Heywood. Counsel, you all
7 need to help me in that regard.

8 MR. BONASSO: I believe he's a gynecologist.

9 THE COURT: A gynecologist.

10 PROSPECTIVE JUROR: Is he in Charleston?

11 MR. BONASSO: Yes.

12 PROSPECTIVE JUROR: Yes, I know him. I mean yes.

13 THE COURT: All right. Would you like to come to the
14 bench, sir?

15 PROSPECTIVE JUROR: If you want me to.

16 THE COURT: I would love it. Thank you.

17 (Laughter.)

18 (The following occurred at sidebar.)

19 THE COURT: Give the court reporter your name and
20 number please.

21 PROSPECTIVE JUROR: Julian Martin, Number 30.

22 THE COURT: Mr. Martin, tell us how you know
23 Dr. Heywood.

24 PROSPECTIVE JUROR: He did the surgery on my wife, I
25 think. He's a gynecologist in Charleston, right?

—Jury Selection—

1 THE COURT: Okay.

2 MS. WAGSTAFF: Yes, he is.

3 PROSPECTIVE JUROR: Heywood?

4 THE COURT: How long have you known him?

5 PROSPECTIVE JUROR: I don't know him. I just know
6 that he was her doctor. I mean, I don't --

7 THE COURT: The lawyers have told me that he may very
8 well be a witness in this case. I am going to give you jurors
9 an instruction on how to judge the believability or
10 credibility of all of the witnesses' testimony. Are you going
11 to be able to apply that instruction to Dr. Heywood equally as
12 you would to one of the doctors that you don't know?

13 PROSPECTIVE JUROR: Yes.

14 THE COURT: In other words, I know about as much of
15 this case as you do. You and I are at a disadvantage. The
16 lawyers know much more about it. But Mr. -- Dr. Heywood may
17 testify to something, another doctor may testify to the
18 complete opposite. I don't know if that will happen. Is
19 there anything that you know about him that would cause you to
20 believe him more than the other doctor without hearing or --
21 hearing the testimony?

22 PROSPECTIVE JUROR: I -- not knowing the other
23 doctor, I -- I mean -- I think Dr. Heywood is an honest person
24 but -- so I don't know what -- what would be said by the other
25 side so, you know --

—Jury Selection—

1 THE COURT: Okay.

2 PROSPECTIVE JUROR: -- I would -- I would believe him
3 in one way, but also if someone offered the opposite testimony
4 that sounded credible, I would -- I would have to decide.

5 THE COURT: Okay. That's what I'm asking you. You
6 have hit upon it. You would be able -- and don't let me put
7 words in your mouth -- to listen to both of those witnesses
8 and then assess the believability, is that correct, or not?

9 PROSPECTIVE JUROR: Um-hum.

10 THE COURT: Again, please don't let me, Mr. Martin,
11 put words in your mouth. Is that what you intended by your
12 answer?

13 PROSPECTIVE JUROR: Yes.

14 THE COURT: I don't think we can ask more of you than
15 that. Do you lawyers have any questions?

16 MR. FARRELL: No questions.

17 MR. ADAMS: No, Your Honor.

18 THE COURT: All right. Thank you, sir.

19 (Sidebar concluded.)

20 THE COURT: Maya Matusovsky, Dr. Dennis Miller, Alex
21 Robbins, Charles Smith, Abby Fischer, Amy LeBlanc, Todd
22 McCaslin, Janet McGrath. Is that McGrath or it's sometimes
23 McGraw; do any of you know? It's M-C-G-R-A-T-H.

24 MR. ADAMS: It's McGrath, Your Honor.

25 THE COURT: All right. Thank you.

—Jury Selection—

1 Brent Palmisano, Karen Prange or Prange, P-R-A-N-G-E,
2 John Sherry, Lee Sullivan, Frank Zakrzewski, Dr. Rodney Dean,
3 and Kurt Douglass.

4 All right. The record should reflect that those
5 jurors who raised their hand were brought to the bench, and,
6 otherwise, no hands have been raised as to any knowledge of
7 the jurors.

8 Counsel, let me see you here briefly, please.

9 (The following occurred at sidebar.)

10 THE COURT: Any other matters that you have to
11 inquire?

12 MS. WAGSTAFF: I don't think so, not from plaintiffs.

13 MR. FARRELL: Not unless you are willing to
14 reconsider your reconsideration of my request for you to
15 reconsider the striking of Juror Number 17.

16 THE COURT: Your motion to reconsider my denial of
17 your motion to reconsider is denied.

18 Anything further, counsel?

19 MR. ADAMS: Your Honor, we do have a concern about
20 Mr. Martin, and it has nothing to do with what he said. The
21 concern is whether he can hear okay, if he can hear all of the
22 evidence being presented. I think you asked -- well, maybe if
23 you reask the general question, just so it's clear that he
24 can. But that was the only issue.

25 THE COURT: Nothing further then? All right. You

—Jury Selection—

1 all want to break to prepare your strikes?

2 MR. ADAMS: Yes, that would be great.

3 THE COURT: How long?

4 MR. FARRELL: Preliminarily, do you intend to keep
5 the jury in their seats while we strike or are you going to
6 give them a break and send us to our rooms?

7 THE COURT: I would like to give them a break and
8 give you a break, that we do the strikes in open court with
9 them seated in the seats that they are now sitting in.

10 MR. FARRELL: We would prefer that so we can see
11 them.

12 THE COURT: Yes.

13 MR. FARRELL: We would ask, depending --

14 THE COURT: Mr. Bonasso's really interrupting me. I
15 can't hear you, Mr. Farrell.

16 MR. FARRELL: For purposes of a break, do you intend
17 to give them a lunch break or are you --

18 THE COURT: I would like to finish striking the jury.

19 MR. FARRELL: Okay. We could take 10 minutes then.

20 THE COURT: All right.

21 MR. ADAMS: Maybe 15.

22 THE COURT: Okay.

23 (Sidebar concluded.)

24 THE COURT: Ladies and gentlemen, one last question
25 for you. We are getting close to the end here and I

—Jury Selection—

1 appreciate all of your patience.

2 Have all of you been able to hear me and to hear the
3 lawyers well?

4 (No response.)

5 THE COURT: Okay. With that, then, we are going to
6 take a recess of 15 minutes.

7 While you're out, do not discuss the case among
8 yourselves or permit anyone to discuss it with you or in your
9 presence.

10 Please return to the courtroom at about six minutes
11 after the hour. The lawyers will then conduct their strikes,
12 and I will be able to release those of you who will not be
13 seated on the jury, so we are a lot closer than we have been.

14 Those of you who are in your seats, make sure when
15 you come back to the courtroom that you take the exact same
16 seats you are now sitting in. We will stand in recess until
17 about six minutes after the hour.

18 COURT SERVICES OFFICER: All rise.

19 (A recess was taken at 12:53 p.m.)

20 THE COURT: Madam Clerk, if you would pass the
21 strike sheet, please.

22 (Counsel proceeded to exercise their peremptory
23 strikes, after which the following occurred:)

24 THE COURT: Ladies and gentlemen of the jury, this
25 process will take a while. And while you are waiting, I want

—Jury Selection—

1 to express my appreciation to you all for your jury service.
2 As you can see, it can take quite a while. You all have been
3 very patient.

4 And, more importantly than that, I want to tell you
5 and express to you how important it is that you serve. I
6 think if you all look at the national media, you will see and
7 understand that the public does not trust lawyers. They don't
8 trust judges. And, so, they do trust and accept what juries
9 do.

10 That means to me whenever you all come to the
11 courthouse and deliberate, issue a verdict, you're adding some
12 credibility to what goes on here at the courthouse. So, your
13 service is very, very important and we appreciate it very
14 much.

15 I know oftentimes you find yourselves waiting and you
16 think that we're not being very respectful of your time. It
17 takes some time unfortunately. But please know that we do
18 appreciate your service and it's extremely important to the
19 public's faith in what goes on at the courthouse. So, thank
20 you all very much.

21 MR. ADAMS: Your Honor, may we approach your clerk to
22 clarify something.

23 THE COURT: Sure.

24 (Pause)

25 THE COURT: Ladies and gentlemen, if your name is

—Jury Selection—

1 called, please go to the back of the courtroom.

2 THE CLERK: Andrea Parsons, Gaynell Boggess, Sara
3 Adkins, Tonya Thomas-Clark, Jessica Edwards, Lisa Moser,
4 Margaret Cordray, Cathy Ferris, Angela Shears, William Boyle,
5 Alice Mollohan, Melissa McClure, Annette Phillips, Chester
6 Mitchell, Catherine Czeck, Daniel Lester, Brian Black, Julian
7 Martin, Kathryn Flanagan, Randall Matthews, Craig Aliff.

8 THE COURT: Ladies and gentlemen, for those of you
9 who are in the back of the courtroom, I can release you at
10 this time. And, again, thank each of you for your service.
11 And just wait to see when you'll next be called. Thank you.

12 (Remaining jurors excused)

13 THE CLERK: Our seated jury will be Lisa Stanley, --
14 Ms. Stanley, if you would please just take the first
15 seat there on the back row. I don't want to put you in the
16 corner, but if you'll take that first seat.

17 PROSPECTIVE JUROR: This one?

18 THE CLERK: Yes.

19 -- Chris Goertler, Chester Porter, Gaylen Cole, Laura
20 Wetherholt, --

21 Ms. Wetherholt, if you would please take the seat in
22 the front row.

23 -- Martha Ruble, Marvin Thompson, and Lindsay Powell.

24 THE COURT: Ladies and gentlemen, those are the seats
25 that you will be sitting in throughout the course of the

—Jury Selection—

1 trial. I am about to release you for the weekend. Before you
2 go, there are a few things that I want to cover with you.

3 Generally, you would take another oath to well and
4 truly try this case. But since the evidence is going to begin
5 on Monday, I'll wait until that time for you to take that
6 oath.

7 For your planning, we will try to start at 9:00 in
8 the morning and conclude somewhere around 5:00 depending on
9 where we are with the witness. I will take a break mid
10 morning and one mid afternoon, or I should say I will try to.
11 My staff says I forget to take breaks. So, I will try to take
12 breaks. We will also recess for lunch and take an hour, hour
13 and 15 minutes for lunch during the course of the day. In the
14 evening we may run over a little bit or quit a little bit
15 early depending on where we are with witnesses. But I will
16 try to make it around 5:00 each day.

17 When you return on Monday morning we'll get started
18 at 9:00 a.m. Please take the same seats that you're now
19 sitting in.

20 You will be under continuing order not to discuss
21 this case with anyone during the course of the trial. When
22 you go home it's not going to be unusual for some family
23 member once they find out you're sitting on a jury to ask you
24 what it's about and want to discuss it with you. You are
25 under a continuing order not to discuss this case with anyone.

—Jury Selection—

1 Tell them that if you discuss it, "The Judge has promised to
2 put me in jail." Do whatever you have to do, but do not
3 discuss the case with anyone.

4 At the conclusion of the case after verdict you will
5 be free to discuss it with anyone. But so that I can be
6 convinced that only your fellow jurors' opinions enter into
7 your deliberations, you should not discuss it at all during
8 the course of the case.

9 I'm further going to order that you not listen to,
10 view, or read any media coverage that there might be of this
11 trial. I don't know that there will be any. But, again, to
12 ensure that your verdict is based solely on the evidence that
13 you hear in this courtroom, you are not to listen to, read, or
14 view any news media that there might be.

15 I will have some other preliminary instructions for
16 you on Monday morning. Our state is somewhat small. Our city
17 is small. And, so, over the course of the weekend and Monday
18 morning it would not be unusual for you to run into some of
19 these folks who are seated at counsel table.

20 There's nothing wrong with common courtesy. Quite
21 frankly, we could use more of it. But nothing wrong with
22 speaking, saying, "Good morning." But do not try to discuss
23 the case with anyone.

24 Now, these parties, if you speak to them, these
25 lawyers may very well try to shy away from you all. That's

—Jury Selection—

1 not intended as any arrogance or unfriendliness on their part.
2 They are simply trying to keep my instruction that they stay
3 clear of you ladies and gentlemen of the jury.

4 With that, I am going to release you until 9:00.
5 We'll make every effort to start promptly at 9:00. The Court
6 Security Officer will show you your jury deliberation room and
7 where you should come to on Monday morning.

8 Have a good, restful weekend and I'll look forward to
9 seeing you then.

10 (The jury left the courtroom at 1:45 p.m.)

11 THE COURT: Counsel, is there something further?

12 MR. LOVE: Logistics for Monday. May we have a few
13 minutes of your time?

14 THE COURT: Yes, sir.

15 Mr. Love, before you begin, let me ask you all if you
16 have designated your time-keepers as instructed by the Court.
17 Both sides has done that?

18 MR. BONASSO: We have.

19 MR. LOVE: We have.

20 THE COURT: And I think you are under an obligation
21 to advise each other of the witnesses you intend to call on
22 the upcoming date as well.

23 MR. ADAMS: That's correct.

24 THE COURT: Mr. Love.

25 MR. LOVE: Just briefly. Opening statements, for

—Jury Selection—

1 instance, do you require that we stay behind the podium,
2 within arm's length, or do you have any general dos and don'ts
3 about opening statements?

4 THE COURT: The jury, of course, will be seated in
5 the box, and we have this podium that I'm going to permit you
6 all to stand in front of in front of the jury box so that you
7 can face them if you want. I think this is somewhat awkward
8 in trying to face the jury.

9 MR. LOVE: Timing. We've been told 45 minutes to an
10 hour.

11 THE COURT: I am all for 45 minutes, but I will give
12 you as much as an hour.

13 MR. LOVE: Okay. I think that's all I have before we
14 start Monday morning. Do we start promptly at 9:00? Do we
15 meet at 8:30?

16 THE COURT: We're going to start with the jury
17 promptly at 9:00.

18 MR. LOVE: Perfect.

19 THE COURT: Mr. Adams.

20 MR. ADAMS: I do have some issues I wanted to alert
21 the Court to.

22 As you know from reading Judge Goodwin's motion in
23 *limine*, there are various pieces of evidence that he said, "I
24 can't make a determination on this issue at the time. I'll
25 have to do it at trial."

Jury Selection

1 THE COURT: Yes, sir.

2 MR. ADAMS: That raises the issue as to whether those
3 pieces of evidence may be referred to in opening statement.

4 THE COURT: Anything that the Court has reserved
5 ruling on I will preclude you from discussing during the
6 course of opening.

7 MR. ADAMS: Okay. And I'll give you an example that,
8 frankly, we were concerned about.

9 There was a, there was a product that was made by
10 Boston Scientific in the '90s. And that product was not the
11 type of mesh that we're talking about. And it was also
12 collagen-coated, so a different type of product than an Obtryx
13 SUI mesh.

14 We filed a motion to exclude that. Judge Goodwin,
15 you know, recognized arguments on both sides and said, "I'm
16 going to have to wait to hear the evidence to decide it." I
17 would assume that is not going to be discussed in opening
18 statement.

19 THE COURT: Anything that the Court has reserved
20 judgment on I will preclude in opening statements.

21 MR. ADAMS: Fair enough.

22 MR. LOVE: Just so we're clear, Your Honor, that
23 particular issue is, is an important one in this case and
24 actually was denied by the Judge, but without prejudice. And
25 these are important issues that I think lay the foundation for

—Jury Selection—

1 much of the evidence that's going to come in.

2 Would it be possible maybe Monday morning to come in
3 about a half hour early so you could take some of these issues
4 up? I think there's only one or two that they're interested
5 in. But I'm certainly interested in getting at least the
6 Court's foresight.

7 My impression is typically if I say something in
8 opening that I can't prove, certainly Rob Adams can shove that
9 down my throat in closing statement. But I think once you see
10 the evidence unfold over the course of the trial, the reason
11 these *limine* motions were denied was because Judge Goodwin
12 does have a good understanding of the issues, and I would hate
13 to not be able to tell the whole story. And, certainly, if
14 I'm wrong the jury's never going to hear the evidence and Mr.
15 Adams is going to point that out in closing statement.

16 THE COURT: He is very familiar with the evidence in
17 this case and still reserved ruling until he could see the
18 context, counsel. So, that's exactly where someone who is
19 less familiar with the case will be. I'll listen to the
20 context. But unless it's ruled on definitively, you're not to
21 refer to it in opening statements.

22 MR. LOVE: Fair enough.

23 MR. ADAMS: The other thing I wanted to alert to you,
24 Your Honor, we made great progress with Judge Eifert on all of
25 the designations for the videotape. There are certain gaps

—Jury Selection—

1 that may exist and those are, those go back to the motions *in*
2 *limine* because we don't know what's in and out based on
3 certain of the rulings that were reserved. So, the sole
4 purpose of bringing that up is to give you the heads up that
5 that will be an issue.

6 Another issue that the Court will have to deal with,
7 same issue on some of the documents that have to deal with
8 some of the motions *in limine* that are in reserve or, you
9 know, limbo right now.

10 So, I wanted to give you a heads up that those may be
11 some documents that we may have to stop, you know, for an
12 objection and the Court will have to hear us out on that
13 issue.

14 THE COURT: You all do your best given the guidance
15 that the Court has given you thus far. But anything that's
16 outstanding I am going to take up, as he has indicated, either
17 after hearing the context in which it's offered or otherwise
18 if possible.

19 MR. MONSOUR: I have one question.

20 THE COURT: Mr. Monsour.

21 MR. MONSOUR: I have one question, Your Honor. As I
22 understand the motion *in limine* rulings, if a motion *in limine*
23 is denied, as many of these were denied, as I've always
24 understood it, we are allowed -- a motion *in limine* simply
25 requires us to go forward and approach the bench before we go

—Jury Selection—

1 into a certain manner, certain subject.

2 In these rulings, the motion *in limine* was denied.
3 They still have the right to object once we go into it. And
4 then if they wish to, they can have a sidebar. But as I
5 understand the motion *in limine* ruling, we don't even have to
6 approach ahead of time in light of the fact that the motions
7 *in limine* were denied.

8 THE COURT: If the motion has been denied, that's
9 true. There are a number of these motions that have been
10 denied and/or granted with prejudice. And when I look at the
11 Court's ruling, the Court has indicated it wanted to see the
12 context in which something was offered.

13 If that's -- if it has been denied, you're exactly
14 right. If the Court has reserved the ability to see in what
15 context the evidence comes in, that I'm precluding you all
16 from getting into in your openings.

17 MR. MONSOUR: My, my biggest, my biggest confusion,
18 Your Honor, is I've never had motions *in limine* with prejudice
19 or without prejudice before. Typically, they're either denied
20 or granted.

21 And I guess that's where I'm lacking in my knowledge
22 because the Court does say that it's denied with prejudice or
23 without prejudice and they can bring the issue back up. But
24 as I understand it, that still does not require us to -- the
25 plaintiffs to affirmatively approach first. If they want to

—Jury Selection—

1 object and challenge the context, then they can. But we do
2 not have to affirmatively approach the bench before we go into
3 it. That was my understanding. And if I'm wrong, I would
4 love to hear it from the Court.

5 THE COURT: If I can get any clarification for you on
6 that issue as to what the Judge intended, I will be happy to
7 share that with you.

8 MR. MONSOUR: Okay.

9 THE COURT: But as it stands now, I don't have
10 anymore clarification than you would have. And I would
11 actually expect you all to have more.

12 MR. MONSOUR: Okay.

13 THE COURT: Anything further?

14 Yes, sir.

15 MR. FARRELL: Given the fact that there's a lot of
16 lawyers at the table and witnesses coming and going, would it
17 be okay with the Court if the lawyers could go behind the bar
18 or come and go to get witnesses ready and depositions without
19 asking leave of the Court every time?

20 THE COURT: I will grant leave for that, for that
21 purpose now, Mr. Farrell.

22 MR. FARRELL: And then in addition to that, our
23 clients who will be here, some of them have to go to the potty
24 fairly regularly. Is it okay for them to come and go as well?

25 THE COURT: Yes, sir.

—Jury Selection—

1 MR. FARRELL: And then, finally, we begged for Judge
2 Goodwin's leave to use the internet for legal research
3 purposes inside the courtroom. I understand that you don't
4 want us doing research on the internet and medical research
5 and stuff. But if there was -- if there is Westlaw or some
6 legal research that we want to access, would that be okay from
7 our desks?

8 THE COURT: My recollection is that that was supposed
9 to be set up for you all in the attorney rooms in front of the
10 court to do it there.

11 MR. FARRELL: Okay.

12 THE COURT: Anything further?

13 MR. LOVE: That's all from our side.

14 MR. ADAMS: I think we're good. Thank you.

15 THE COURT: You all have a good, restful weekend.

16 (Trial recessed at 1:54 p.m.)

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REPORTERS' CERTIFICATE

Carol Farrell, CRR, RMR, CCP, RPR, RSA, Official Court Reporter of the United States District Court for the Southern District of West Virginia, and **Lisa A. Cook, RPR, RMR, CRR, FCRR**, do hereby certify that the foregoing is a true and accurate transcript, to the best of our ability, of the proceedings as taken stenographically by and before us at the time, place, and on the date hereinbefore set forth.

/S/ Carol Farrell, CRR, RMR, CCP, RPR

10/31/14

Court Reporter

Date

/S/ Lisa A. Cook, RPR, RMR, CRR, FCRR

10/31/14

Court Reporter

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